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COMMISSION ON HUMAN RIGHTS
Fifty-third session
Agenda item 3

# ORGANIZATION OF THE WORK OF THE SESSION

## Letter dated 21 March 1997 from the Permanent Representative of Colombia to the United Nations Office at Geneva addressed to the Chairman of the Commission on Human Rights

I have the honour to transmit to you, in your capacity as Chairman of the fifty-third session of the Commission on Human Rights, a memorandum on the action being taken by the Government of Colombia for the establishment of an Office of the United Nations High Commissioner for Human Rights in Santafé de Bogotá.

I request you kindly to distribute this memorandum as a document in Spanish and in English.

(Signed) GUSTAVO CASTRO GUERRERO
Ambassador

GE.97-11285 (E)

Annex

## ACTION BY THE COLOMBIAN GOVERNMENT FOR THE ESTABLISHMNENT OF AN OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

1. On 7 August 1994, Ernesto Samper Pizano assumed his duties as President of the Republic of Colombia. One month later, on the occasion of the human rights national day's celebration, the Head of State displayed before the country his policies on human rights, headed by the following assertion: "the National Government has full clarity on the fact that the human rights problem is not a question of image but of realities. We, Colombians, have to reduce -until extirpated- violence, political violence and human rights violations.
As long as we do not work with determination and earnestness in this direction, and will not obtain tangible success, we shall not be able to fulfil the commitment we have with ourselves as citizens of a democratic, modern and civilised nation" (Ernesto Samper Pizano. "Human Rights. A Policy for Life". 9 September 1994).

2. In the aforementioned document, the government established guidelines for the relations with the human rights international community, in the following terms: "in spite of difficult circumstances faced by the country in terms of violence and public order, we are going to assume the challenge to be capable to show ourselves before the international community as a country restlessly working for the respect of the human rights and international humanitarian right within its boundaries, and not afraid to be exposed to the scrutiny of the inter-governmental agencies and international non-governmental organisations defending human rights and seeking development of the international ruling system for the mentioned issues" (Ernesto Samper Pizano. "Human Rights. A Policy for Life". 9 September 1994).

3. In furtherance of these premises, during an interview held in Bogota in December 1994, the Colombian President requested the United Nations High Commissioner to establish an Office in Colombia. The same offer was made to Amnesty International, who did not accept for having different operation mechanisms.

4. While extending both invitations (paragraph 3), the Colombian Government, acted motivated by the principles of aperture and transparency expressed in its human rights policy (paragraph 2) and by the need to obtain from the international community -through a permanent presence- a more complete and objective vision of the complex Colombian reality, so that co-operation may give an adequate response to the situation.

5. Following the invitation of the Colombian Government, the United Nations High Commissioner for Human rights sent a mission to Colombia in September 1995, in order to explore together with the authorities and human rights non-governmental organisations, the viability and possible functions of an Office of his own in Colombia.

6. In March 1996, Colombian governmental delegates met in Geneva with the High Commissioner, who asserted his willingness to advance towards the establishment of the Office.

7. Through a letter dated 2 April 1996, the President of Colombia insisted upon his proposal to the High Commissioner.

8. During the 52d Session of the Commission on Human Rights (March, April 1996), the Colombian delegation established a constructive dialogue with the European and American Missions which were utmost concerned with the Colombian situation, to the purposes of discussing the pertinence and importance of the High Commissioner's Office. Likewise, consultations with national and international Human Rights NGOs, present in Geneva, and which had great interest that the Commission dealt with the Colombian case.

9. During such consultations, it was agreed to ask the Chairman of the Commission to request -through a declaration of its own- the High Commissioner the establishment of the Office in Colombia.

10. On 23 April 1996, in development of agenda item 3 (Organisation of the work), the Chairman of the Commission on Human rights read his Declaration which in its operative part requests the High Commissioner that, taking the initiative of the Government of Colombia into consideration and after finding adequate financing resources, proceed to establish, as soon a possible, a Permanent Office in order to assist the Colombian authorities in the development of their policies and programmes for the protection of human rights, to observe human rights violations in the country and report to the High Commissioner through analytical reports. He also requests the High Commissioner to present a report to the Commission during its 53d session, on the establishment of the Office and activities carried out in fulfilment of its mandate.

11. On 29 April 1996, Mr. Georg Mautner-Markhof, United Nations Special Procedures Chief of the Centre for Human Rights sent a "draft project of agreement related to the establishment of the Office in Bogota".

12. During May, June and July 1996, the Colombian Ministry for Foreign Affairs and the Presidential Human Rights Office reviewed the draft project and formulated some observations and alternative proposals; they sent it to different Presidential Ministers and Counsellors for revision and comments; they elaborated a draft proposal for the Agreement relating to the establishment of the Office whose text was discussed with the Colombian

President and the Ministers of the Interior, Defence and Justice. The draft with the governmental modifications was sent to the United Nations High Commissioner for Human Rights. Furthermore, a meeting with representatives of human rights non-governmental organisations was held in presence of the Minister of Foreign Affairs, where their views and reactions to the proposed text were discussed.

13. Between 18 and 21 August 1996, a Colombian governmental delegation arrived in Geneva in order to negotiate the Agreement with the High Commissioner.
During an intense series of meetings, the two proposed texts were taken, subjects of divergence were reviewed and consensus formulations were looked for. During negotiations, the International Committee of the Red Cross (ICRC) was consulted on various occasions on the allusions made in the draft to the work of the Office regarding the promotion of the International Humanitarian Law, so as to fully respect the mandate of the ICRC.

14. The Colombian governmental delegation and the High Commissioner advisors reached agreements on the Convention's structural items among which the following should be stressed out: Office's mandate, objective and general criteria for its activity as well as Office's function, composition and duration of the Agreement.

15. By decision of the High Commissioner, aspects of the agreement relating to the Office member status, privileges and immunities were sent by him to the United Nation's Legal Office in New York.

16. During the session of the United Nation's General Assembly, the Colombian President requested the United Nations Secretary General to speed up the answer to the consultation of the High Commissioner on the Agreement.

17. With the same purpose, on 9 October 1996 the Vice-minister for Foreign Affairs met with the United Nations legal Adviser in New York.

18. On 17 October 1996, the United Nations Legal office in New York sent its observations to the Colombian Government, which not only referred to the object of consultations but also to structural aspects of the Agreement already negotiated in Geneva.

19. New observations obliged to the reopening of the negotiation, which took place per written and telephonic ways between the Colombian government, the High Commissioner in Geneva and the Legal Office in New York, as described in the following paragraphs:

20. On 5 November 1996, the Colombian Government wrote to the High Commissioner and to the Legal Office in New York to respond to the latter's observations.

21. On 12 November, the Ministry for Foreign Affairs received a new communication from the United Nations Legal Office which was answered by the Government three days later (15 November 1996).

22. On 26 November, the Colombian Ministry for Foreign Affairs received a letter from the High Commissioner enclosing a new draft of the Convention including negotiated items so far, but some of them contained new variations. The Government replied this proposal on the same day it had been received.

23. Between 27 and 29 November 1996, during long telephonic working hours the Colombian Government and High Commissioner negotiating teams reached and agreement on the full text.

24. On 29 November 1996, the Agreement was signed in Geneva by H.E. Mrs. Maria Emma MEJIA VELEZ and Mr. Jose AYALA LASSO, High Commissioner for Human Rights.

25. the Colombian Government was committed to pay the rent of the facilities destined to the Office's functioning in Bogota, on previous joint selection with the High Commissioner.

26. In January 1997, the Colombian Government informed the High Commissioner that it had pre-selected some facilities and requested a delegation in order to jointly chose the most adequate.

27. Mr. AYALA LASSO sent two delegates to the aforementioned effects between 8 and 15 February last. As a result, three options were agreed within a certain priority order.

28. On such occasion, the High Commissioner delegates requested that the Government assume facilities adjustment costs. The Government accepted the request and immediately initiated legal handling to obtain resources and bestow the contract to a private enterprise.

29. At the same time, the Colombian Ministry for Foreign Affairs carried out proceedings with the rental agencies and succeeded in contracting facilities pointed by the High Commissioner delegates as first priority. Facilities are at the disposal of the Director of the Office and the adjustment work is in quick progress, so that the Office's establishment will not be delayed for this reason. According to information received from the Centre for Human Rights in Geneva, the Director of the Office will be initiating functions in Colombia next 6 April 1997.

30. Furthermore, the Colombian Government has being carrying out many activities for the information on the contents of the Agreement and also to create the best atmosphere and wider disposal to collaborate with the Office. Thus, meetings with the Ministers and Counsellors in charge of such

questions have been held as well as with High Military Authorities, with the Attorney General and the Prosecutor.

31. On 10 and 11 March last, the Ministry for Foreign Affairs and the Javeriana University held a seminar named "The Office of the United Nations High Commissioner for Human Rights. A Novel Proposal", attended by high state authorities and Non-governmental organisations, united by the same objective to debate most relevant aspects of the Agreement and propose mechanism towards the success of the Office's management.

32. The event included four subjects: Perspectives of the Office's Opening; Mandate; Advisory Functions; and Complaint Reception. Among speakers were the Ministers of Foreign Affairs, Defence, Interior and Justice; the Army Commander, A magistrate (former President) of the Constitutional Court; the Presidential Advisor for Human Rights; the Vice-Attorney General; the General Prosecutor; the Ombudsman; three directors of the most important human rights non-governmental organisations ("Colombian Jurists Commission; Solidarity Committee with the Political Prisoners; and the Latin-American Federation of Relatives of Disappeared Arrested People"); the President of a non-governmental organisation ('Pais Libre') devoted to promote fight against kidnapping; the President of a non-governmental organisation ('Comite Vida') dedicated to defend victims of guerrilla violence; a member of the National Conciliation Commission and an illustrated professor of the Institute of Political Studies and International Relations of the National University.

33. The seminar on the Office counted on wide dissemination among communication media and stressed the great expectations and commitment existent in Colombia toward the functioning of the Office. Of course, the event also pointed out possible difficulties in the Agreement's execution. The seminar resulted in a great number of proposals to facilitate the functioning of the Office and they will be submitted to Mrs. Almudena Masarraza, upon her arrival in Colombia.

34. Colombia requests the Commission on Human Rights and all member States of the United Nations Organisation their full support for this novel mechanism of co-operation to effectively contribute to improve the difficult human rights situation and international humanitarian law we are bearing, to a great extent as a consequence of the internal armed conflict started already forty years ago.
Colombia has fulfilled its part of the agreement and will continue expeditiously complying with it so as to try that the Office, in accordance with the agreed text, will be able to fully carry out its advisory and observation functions and will function as a management and inter-locution Centre with all sectors involved and interested in the Colombian human rights question.

Geneva, 19 March 1997

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

# Report of the Secretary-General on the situation of human rights in Myanmar, submitted pursuant to General Assembly resolution 51/117

1. The present report is submitted pursuant to paragraph 17 of General Assembly resolution 51/117 of 12 December 1996, entitled "Situation of human rights in Myanmar", in which the Assembly requested me to continue my discussions with the Government of Myanmar in order to assist in the implementation of that resolution and in its efforts for national reconciliation and to report to the Assembly at its fifty-second session and to the Commission on Human Rights at its fifty-third session.

2. As I have indicated in previous reports, I view the role entrusted to me by the General Assembly to be one of good offices, as distinct from the fact-finding mandate assigned by the Commission on Human Rights to the Special Rapporteur on the situation of human rights in Myanmar.

3. The Commission will be aware from my report to the General Assembly (A/51/660) that three rounds of talks were held in New York and Bangkok with the Minister for Foreign Affairs of Myanmar, U Ohn Gyaw, between April and October 1996. The results of these talks were conveyed to the Assembly at its fifty-first session in the above-mentioned report.

4. Following the adoption of resolution 51/117 by the General Assembly on 12 December 1996, the Permanent Representative of Myanmar to the United Nations was asked in January 1997 to convey to his Government a proposal that the Director of the East Asia and the Pacific Division of the Department of Political Affairs undertake a visit to Myanmar as part of the

Department's routine consultations with the countries in the region, and to lay the groundwork for a new round of talks in Yangon between the Myanmar authorities and the Secretary-General's Envoy prior to the submission of my report to the Commission at its fifty-third session.

5. The Government of Myanmar agreed to the visit by the Director of the East Asia and the Pacific Division, Mr. Francesc Vendrell, which took place from 17 to 21 February 1997. During his visit, Mr. Vendrell held consultations with the Minister for Foreign Affairs, U Ohn Gyaw, the Minister for Progress of Border Areas and National Races and Development Affairs, Lieutenant-General Maung Thint, the Minister for Cooperatives and General-Secretary of the Union Solidarity and Development Association (USDA), U Than Aung, the Chief Justice, U Aung Toe, the Attorney-General, U Tha Tun, senior members of the Office of Strategic Studies and Directorate of Defence Services Intelligence at the Ministry of Defence, and officials of the Ministry of Foreign Affairs. Mr. Vendrell also held consultations with leaders of political parties, namely, the National League for Democracy (NLD), including its General-Secretary Daw Aung San Suu Kyi, the National Unity Party (NUP) and the Shan Nationalities League for Democracy (SNLD).

6. In his meetings with the Minister for Foreign Affairs and other senior officials of the Ministry of Foreign Affairs, Mr. Vendrell proposed that a visit by the Assistant Secretary-General for Political Affairs, Mr. Alvaro de Soto, take place in March. As my Envoy, Mr. de Soto would hold talks at the appropriate level, thereby enabling me to submit a more comprehensive report to the Commission in time for its fifty-third session. Various modalities were suggested by Mr. Vendrell for the consideration of the Government of Myanmar so that future visits by my Envoy to Myanmar could become more regular and less contentious than in the past. The Ministry of Foreign Affairs took note of the proposals without giving an immediate response concerning the proposed date for my Envoy's visit.

7. Mr. Vendrell's proposal was followed up in New York with the Permanent Mission of Myanmar to the United Nations by the Assistant Secretary-General for Political Affairs. The Government of Myanmar responded that senior government officials were tied up until the end of April, and would only be able to welcome my Envoy after that. It has thus not been possible for my Envoy to visit Myanmar prior to my submission of this report.

8. While the February 1997 visit to Myanmar was part of routine consultations with countries in the region and was therefore not at the level that would be appropriate for a good offices mission by my Envoy, I wish to convey some of the salient points of Mr. Vendrell's discussions with his interlocutors in Myanmar, insofar as they relate to the issues raised in General Assembly resolution 51/117.

9. Regarding the National Convention, which has not met since March 1996, the authorities explained that after reaching a consensus on the Constitution's 104 fundamental principles and three chapters on the "State", "State Structure" and "Head of State", it is next due to consider power-sharing between the central Government and the states, regions and self-administered areas in the context of the chapters on the legislature, executive and judiciary. They also stated that preliminary discussions were being held on

that important matter amongst the various Ministries and between the Government and the national races. It was argued that the Constitutions of 1948 and 1974 had failed because they had not adequately addressed the aspirations of the national races, and that it was important to ensure that the future Constitution reflected their aspirations. No time-frame was given as to when the National Convention would reconvene. According to the Chief Justice, who is also the Chairman of the National Convention Convening Working Committee, once the issue of power-sharing had been resolved it should be possible to move faster with the drafting of the remaining chapters, namely, on the formation of political parties, the Tatmadaw (Myanmar Armed Forces), citizens' rights and responsibilities, elections, emergency provisions, amendments to the Constitution, the national emblem and capital, transitional provisions, general provisions, and the division of powers between the legislative, executive and judiciary branches. On the other hand, some representatives of political parties and national races indicated that they were not aware that discussions between the Government and the ethnic groups were taking place.

10. It was repeatedly emphasized by government officials that the priority for Myanmar was the resolution of the various insurgencies that had plagued Myanmar since its independence. They pointed out that for the first time in its history the guns were silent in most of Myanmar owing to the cease-fire agreements reached between the armed ethnic groups and the Government. They further stressed that only after there were no more threats to the stability of the country could discussions on multi-party democracy be held and that only a "disciplined" body like the Tatmadaw was in a position to ensure that the armed groups gave up their weapons once the drafting of the Constitution had been completed. In the view of representatives of some political parties and national races, the end of the insurgencies was unlikely to come about unless the National Convention was fully representative and a genuine dialogue was established between the Government, the political parties and the ethnic groups.

11. Regarding the recent military operations against the Karen National Union (KNU), the Government indicated that it had held four meetings in 1996 with representatives of the KNU, which the Government considered to be the last remaining armed ethnic group which had not "entered the legal fold". According to the Government, no agreement had been reached with the KNU because the KNU leadership could not accept the same conditions which had been agreed by the other armed ethnic groups and the Government could not treat the KNU differently from the other groups by agreeing to a separate set of demands, including a political dialogue, which could only take place within the National Convention. In view of the failure of the negotiations, the Government had decided to send troops to the border areas to clear out the KNU camps and reassert government control over the entire national territory.

12. According to the Government, little significance should be attached to the Mae Tha Raw Hta meeting of ethnic groups held in January on the Myanmar-Thai border, which was reportedly attended by representatives of several national races and which, inter alia, called for the dissolution of the "sham" National Convention and a tripartite dialogue between the State Law and Order Restoration Council, Daw Aung San Suu Kyi and "pro-democracy forces", and leaders of the ethnic nationalities. The authorities explained

that most of the ethnic groups that were "in the legal fold" had not attended the meeting, and those that had done so had informed the Government subsequently that they had not signed the declaration issued at the conclusion of the meeting.

13. In reply to questions posed by Mr. Vendrell on the prospects for a dialogue with Daw Aung San Suu Kyi and the NLD, which had won an absolute majority of votes in the 1990 elections, the Government reiterated that the only forum for political discussions was the National Convention, from which the NLD had chosen to withdraw in November 1995 (and from which it had subsequently been expelled), that the 1990 elections had not been held for the purpose of an immediate transfer of power since the 1974 Constitution had become irrelevant, that a new Constitution was required before a transfer of power, and that over six years had elapsed since the holding of those elections. The NLD representatives, on the other hand, after expressing grave concern about what they considered to be continuing arrests of the party's members, pointed out that the NLD decision to participate in the National Convention for almost three years was not meant to reflect their concurrence with the Convention's composition or functioning; and that they had decided to withdraw when it became apparent that their proposals had no impact on the Convention's proceedings or results despite the fact that the Convention was supposed to work on the basis of consensus. They indicated their readiness to open a dialogue with the Government without preconditions and to discuss ways of making the National Convention representative. The authorities, however, stated that there were no mechanisms to amend the composition and functioning of the National Convention and that they saw little point in opening a dialogue, however informal, on that or other matters with Daw Aung San Suu Kyi and the NLD.

14. On the prospects for a visit to Myanmar by the Special Rapporteur on the situation of human rights in Myanmar, Mr. Rajsoomer Lallah, before the current session of the Commission, the authorities, while not excluding cooperating with the Special Rapporteur, stated that it was not an opportune time for his visit which, they suggested, would take place at "an appropriate time".

15. The Government reaffirmed its desire to have meaningful contacts with the United Nations and particularly to continue the dialogue with me and with my representatives.

16. I welcome the recent visit to Myanmar by a member of the Secretariat and the fact that he was able to conduct discussions with the Government and with representatives of political parties; and I note the Government's desire to continue a dialogue with me on issues of concern to the international community, as expressed in successive General Assembly and Commission resolutions. On the other hand, it is my strong hope that my Envoy, who has not been able to visit Myanmar for over a year and a half, will be able to do so in the very near future. Such visits are essential if I am to carry out the wishes of the membership. I must also express my disappointment that I cannot report progress about the areas on which the General Assembly and the Commission have repeatedly expressed concern.

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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Letter dated 27 March 1997 from the delegate of the International Organizations Division of the International Committee of the Red Cross addressed to the secretariat of the Commission on Human Rights

**FIRST YEAR OF ACTIVITIES OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW**

1. The search for mechanisms to ensure better observance of the 1949 Geneva Conventions and their 1977 Additional Protocols is at the centre of the debate on international humanitarian law. It is an ongoing concern of the International Committee of the Red Cross. Among these mechanisms, the implementation of international humanitarian law at national level is of special significance. To ensure effective implementation, and thereby better observance of the rules of international humanitarian law, international initiatives must be accompanied by the adoption of legislative, regulatory and practical measures for the implementation of that law at national level as soon as peace is established.

2. At the end of 1995, the International Committee of the Red Cross set up an Advisory Service on International Humanitarian Law to better assist States in fulfilling their obligations to implement international humanitarian law at national level. This initiative was taken pursuant to the recommendations adopted at the twenty-sixth International Conference of the Red Cross and Red Crescent (Geneva, December 1995).

Purpose of the Advisory Service on International Humanitarian Law

3. The purpose of the Advisory Service is to ensure that all States parties to humanitarian treaties have a national legislative and administrative structure in keeping with the requirements of those treaties. Its mandate is thus to support the efforts of competent national authorities to set up such a

structure by providing them with practical advice and technical assistance. This involves working closely with Governments and taking account of their specific needs, as well as their respective political and legal systems. The Service responds to requests for advice and also offers assistance on its own initiative.

## Areas of activity

4. Advice and technical assistance are provided in particular in the following areas:

(a) Promotion of international humanitarian law treaties in order to strengthen their universality and assistance with the ratification of and/or accession to those treaties;

(b) Translation of 1949 Geneva Conventions and the 1997 Additional Protocols into national languages;

(c) Incorporation of international humanitarian law in national law, where necessary;

(d) Adoption of criminal legislation to enable war criminals and other violators of humanitarian law to be brought to justice;

(e) Adoption by all States of national legislation governing the use of protective emblems and penalizing misuse of them;

(f) Integration of instruction in international humanitarian law in official training programmes.

5. Universal participation in humanitarian treaties, the punishment of war crimes at national level and full regulation of the use of protective emblems are considered as of particular importance in ensuring better observance of humanitarian law. These have been identified as areas for priority action by the Advisory Service.

## National mechanisms for international humanitarian law

6. The measures which States must take to meet their treaty obligations are varied and complex. They involve many areas of State activity and affect many sectors of public life. Regular consultations and cooperation among various ministers, branches of the administration and other entities are required.

7. In view of this fact, in 1996, special emphasis was placed on promoting the creation of specific national bodies in the form of interministerial working groups, committees or commissions. Experience has shown that setting up such specific bodies promotes genuine progress towards national implementation of humanitarian law.

8. The Advisory Service has endeavoured to advise Governments wishing to set up a specific humanitarian law body and works closely with them in implementing the necessary measures.

Meeting of experts

9. With the same end in view, a Meeting of experts on committees or other bodies for the national implementation of international humanitarian law was held in Geneva from 23 to 25 October 1996. The aim of the meeting was to enable government experts and representatives of national Red Cross and Red Crescent Societies to exchange information and views on national mechanisms for the implementation of international humanitarian law in the various regions of the world. It was also intended to encourage sharing of the experience of specific national humanitarian law bodies and to help establish contacts and working links between those bodies and the ICRC Advisory Service. Experts from more than 70 countries of the five continents and 35 national Red Cross and Red Crescent Societies spent two days discussing technical questions in an informal setting. The conclusions reached in those discussions showed clearly that the experts present were unanimous in recognizing the usefulness, not to say the necessity, of having a specific national mechanism to coordinate and facilitate the implementation of humanitarian law. 1/

Documentation Centre

10. The Advisory Service also facilitates exchanges of information in the field of national implementation of humanitarian law. An inventory of information collected on the laws and regulations for implementation and on activities for the dissemination and teaching of humanitarian law is compiled in the Advisory Service Documentation Centre at ICRC headquarters in Geneva. The Centre, which is open to government representatives, national Societies, interested institutions and researchers, is able to provide a wide range of legal material on the national implementation of humanitarian law.

Annual reports

11. To ensure the exchange of information on legislative developments in individual countries, the Advisory Service will prepare annual reports for States, the first of which will be available shortly.

12. The activities of the ICRC Advisory Service unquestionably complement those of the United Nations Centre for Human Rights, to which ICRC wishes to pay tribute. The Service will ensure that its activities are coordinated with those of the Centre so that they complement one another and so as to avoid any duplication of effort in assisting States with the implementation of human rights and humanitarian law.

(Signed) Dominique Borel
Delegate
International Organizations Division

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1/ A report on this meeting will be available by the end of April 1997 from the ICRC Advisory Service.

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# FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

## ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Letter dated 21 March 1997 from the Director of the United Nations Development Fund for Women addressed to the Chairman of the Commission on Human Rights

I am writing to request that the attached report* be circulated as an official document of the fifty-third session of the Commission on Human Rights as a contribution of the United Nations Development Fund for Women (UNIFEM) to the discussions of the Commission on the agenda item that deals with the human rights of women.

(Signed) Noeleen Heyzer
Director, UNIFEM

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* The annex is reproduced as received in the language of submission only.

ANNEX

# Integration of Women's Human Rights into the Work of the Special Rapporteurs

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# Integration of Women's Human Rights into the Work of the Special Rapporteurs

1. The 1993 World Conference on Human Rights called on the United Nations human rights bodies, including the special rapporteurs and working groups of the Commission on Human Rights, to address women's de jure and de facto rights on a regular basis. This directive has been reiterated by the Commission itself in its sessions since 1993, through successive resolutions on the integration of the human rights of women throughout the United Nations system, as well as by the Fourth World Conference on Women held in 1995. At its 52nd session, the Commission requested the human rights mechanisms to "regularly and systematically take a gender perspective into account in the implementation of their mandates, including information and qualitative analysis in their reports...."[1]

2. This paper suggests steps that might be taken by the special rapporteurs, special representatives, independent experts and working groups toward the goal of full integration of women's human rights into their reporting and other activities. These recommendations are based on review of the reports submitted to the Commission and the General Assembly since the World Conference on Human Rights and on the report of the expert group meeting on the development of guidelines for the integration of gender perspectives into United Nations human rights activities and programmes, held in Geneva, 3-7 July 1995.[2] Part II summarizes general trends in the reporting on women's human rights and presents recommendations concerning reporting methodology and working methods. Part III addresses "qualitative analysis" by the special mechanisms, i.e., the legal and conceptual frameworks within which women's human rights are presented.

# Part I

## (i.) THE CONCEPT OF GENDER-SPECIFIC ANALYSIS AND REPORTING

3. The concept of gender-specific reporting and analysis entails an examination of the effects of gender on:

- the form which a human rights violation takes;
- the circumstances in which a violation occurs;
- the consequences of that violation for the victim;
- and the availability and accessibility of remedies.

The term "gender" refers to the socially constructed roles of women and men in public and private life. Gender is thus distinct from "sex," which is biologically determined. Gender denotes the significance attached within societies to sex identity. Historically, women's gender roles have been accorded less political, economic, social and cultural value than those of men. To varying degrees in all societies, discrimination against women is systemic and reflected in the structure and functioning of public institutions, de jure and de facto family relations, access to economic resources, and legal systems. Women's ability to exercise and enjoy their human rights is shaped not only by gender, but also by such factors as race, class, ethnicity or other characteristics, as well as the general factors affecting the human rights situation in a particular context. For example, the continued growth in the feminization of poverty both reflects and reinforces systemic gender discrimination. Social and economic class status, racial or ethnic identity, and macroeconomic policies simultaneously act as determinants of poverty among women.

4. Reporting by the experts of the special procedures and advisory services programmes of the Commission should integrate a gender perspective into every category of rights addressed. The integration of a gender perspective includes not only a determination of whether women are specifically targeted for particular abuses on the basis of their gender, but also an examination of how gender affects the forms of violations to which women and men are subjected, the consequences of those abuses, the circumstances in which abuses occur, and the availability and accessibility of remedies.

5. For example, in his 1995 interim report to the General Assembly the Special Rapporteur on the situation of human rights in the Sudan noted that of the children abducted in the southern and northern Sudan, some of the boys are "used as servants, while the girls become concubines or wives...".[1] Thus, the Special Rapporteur recognizes tacitly that while the practices of slavery, servitude and/or forced labor affect both boys and girls, they assume **gender-specific forms:** girls are subjected to sexual slavery (denoted by the term "concubines") and forced marriage. Similarly, in countries where government expenditures for health have been reduced under structural adjustment and debt reduction policies, the right to the highest attainable standard of health is compromised for both boys and girls. If "son preference" is practiced within families in those countries, however, boys receive preferential access to medical care and food. The right of girls to the highest attainable standard of physical and mental health is thereby further impaired on the basis of their gender.

6. The **circumstances** in which violations occur may also be gender specific. For example, in many countries, women are the majority of workers in non-standard work, such as temporary, casual, multiple part-time, contract and home-based employment.[2] In these contexts, they typically lack the protection of labor laws and health and safety regulations from which men in standard work are able to benefit. As has been detailed by the Special Rapporteur on

violence against women, the home is the site of various forms of gender-specific violence. Preventive and remedial measures should be tailored to the specific circumstances in which violations occur, including any social barriers which must be overcome.

7. The **consequences** of violations may be gender specific in nature. For example, while both men and women are raped in conflict situations and in detention, only women become pregnant as a result. Women who have been raped may also sustain harms not experienced by men. For example, in societies where marriage is the only effective means of ensuring women's access to economic resources and securing social acceptance, women who are deemed unfit for marriage as a result of rape will face severe economic and social obstacles to their livelihood. In many circumstances, rape is an example of a violation directed specifically against women: evidence indicates that women are targeted for rape in many situations of armed conflict and political insecurity and that women in detention are frequently raped by police or security officials.

8. Women face a number of gender-specific barriers in **access to remedies**, such as: levels of general literacy and legal literacy lower than those of men; lack of legal capacity to initiate legal action; community pressures to refrain from reporting or seeking redress for such abuses as violence in the family; less access than men to economic resources necessary to pursue redress; and government failure to protect against reprisals in cases involving sexual assault or violence in the family. National law may fail to provide women adequate remedies even for such violations as the denial of equality before the law or gender discrimination in employment. Where adequate remedies do exist, de facto discrimination frequently deters or obstructs women's recourse to those remedies. National officials involved in the administration of justice often lack the training necessary to carry out their duties with the necessary attention to the nature of gender-specific human rights violations.

9. Gender-specific analysis is necessary in order to **identify the international and national legal norms** relevant to a human rights situation or to allegations concerning a particular violation. For example, restrictions on access to information concerning reproductive health implicate the right to freedom of expression and information and the equal right of women and men to determine the number and spacing of their children. Analysis of the consequences of such restrictions for women points to additional relevant rights, including, inter alia:

- women's right to the highest attainable standard of physical and mental health, which may be denied by illness or injury associated with lack of information concerning reproductive health;
- their right to life, which may be denied by maternal mortality or the use of unsafe reproductive technologies associated with lack of information concerning reproductive health;
- their right to equality in marriage, which may be impaired when women lack the reproductive health information which would support decision-making free from discrimination, coercion and violence; and
- various rights of girls under the Convention on the Rights of the Child, which may be impaired if, as adolescents, they undergo childbirth or suffer physical or mental health problems associated with the lack of information concerning reproductive health.

National law may include both provisions that directly breach rights which are the subject of reporting and provisions that indirectly impair women's ability to exercise those rights. Analysis of the systemic nature of gender discrimination is necessary to identify the latter type of provisions.

10. Gender-specific analysis is also necessary to ensure that **recommendations concerning preventive and remedial measures** will be effective in improving human rights protection for women as well as men. For example, the question of land reform has been raised by special rapporteurs or independent experts reporting on a number of country situations. Their recommendations concerning land reform initiatives should include the elimination of any restrictions on women's legal capacity to own, administer and dispose of property, and women's access to credit, in order to encourage the implementation of laws and procedures that will be effective in securing land rights for both women and men. Recommendations concerning preventive measures should address the specific risks women face as a consequence of their subordinate status in society. For example, measures providing for the return of refugees should take into account the risks of sexual assault which women face. Measures for HIV/AIDS prevention and protection should take into account restrictions on women's right and ability to negotiate safe sex in relations with their husbands and other sexual partners. Gender-specific analysis is particularly important in evaluating and recommending national remedies. Recommendations concerning remedial measures should take into account the barriers women may face in seeking to report and obtain redress for violations.

11. The integration of gender-specific information and analysis thus encompasses consideration of the relationship between gender and: the nature, consequences, and circumstances of human rights violations; the availability and accessibility of remedies for violations; and the de jure and de facto realization of women's human rights. Women's human rights must be an integral part of ongoing reporting, not merely a selective focus in a single report. Women constitute half of humanity. The general prohibition of discrimination on the basis of sex applies to all human rights which are the subject of reporting by the experts of the special procedures and advisory services programme.

12. Reporting on country situations should regularly consider whether gender discrimination occurs, as well as violations that affect women disproportionately or take specific forms based on gender. Reporting pursuant to thematic mandates should regularly consider the effects of gender discrimination on the human rights violations or set of violations which are the subject of the mandate. As observed by participants in the expert group meeting on the development of guidelines for the integration of gender perspectives into United Nations human rights activities and programmes, only through a broadly conceived analysis of laws, institutional structures, policies and practices can the barriers to women's full enjoyment of human rights be identified.

# Part II

## TRENDS IN REPORTING

13. Review of the reports submitted to the Commission on Human Rights and interim reports submitted to the General Assembly since 1993 reveals progress toward the goal of gender integration but points to the need for intensified efforts by: experts themselves; the Secretariat; governments responding to requests for information and cooperation in connection with on-site visits; and non-governmental organizations (NGOs) submitting information to the special mechanisms. NGOs comprise a central source of information for reporting and other activities by the special rapporteurs, working groups, special representatives, and independent experts. There is a need for expanded monitoring of women's human rights by human rights organizations and increased attention to gender-specific aspects of human rights by all NGOs, including those involved in humanitarian assistance. In addition, training and resources are needed to build the capacity of women's groups to monitor and document violations. This paper identifies steps that can be taken by the experts of the special procedures and advisory services programmes to facilitate improved monitoring on women's human rights, such as more precise characterization of human rights violations against women, and steps that would enhance integration within the scope of information available at present.

14. Collectively, the reports are characterized by **inconsistent attention to, and analysis of, gender-specific violations.** A number of reports include more information on women's human rights and address a broader range of women's human rights than in the past. Women are among the victims identified in specific cases cited in the majority of thematic and country-specific reports. **Few reports include analysis of the relationship between the abuses suffered by women and their subordinate status in public and private life.** Information on individual cases in which the victims were women is a necessary, but not sufficient, element of effective monitoring of women's human rights. Moreover, some reports submitted to the 52nd session of the Commission include only isolated and cursory references to women's human rights, such as references to the number of women inmates or to the fact that rape and sexual assault of women are alleged to occur. The information provided in country specific reports often centers on violence against women. Although attention to such violence is a necessary element of reporting, the integration of women's human rights requires information and analysis on their enjoyment of the full range of civil, cultural, economic, political and social rights covered in the report. As noted above, reporting on abuses specific to, or disproportionately directed against, women is but one aspect of monitoring women's human rights.

15. **Gender disaggregated data** has been increasingly provided in the reports by both thematic and country-specific mechanisms, but has not been provided in all reports or for all categories of information within reports. These omissions reflect the fact that gender cannot always be determined from the information submitted. However, additional steps could be taken to obtain gender disaggregated information on country situations from within the United Nations system itself. **Sources of information** have been expanded in some reports and in connection with some on-site visits to include women's groups, national officials dealing with women's affairs and other sources likely to have information and expertise on women's human rights. A data bank identifying govern-mental and NGO sources of such information and expertise would facilitate routine referral to these sources.

16. The **conclusions and recommendations** in these reports do not consistently address women's human rights. Recommendations establish benchmarks of governments' commitment to, and progress toward, ending violations. Recommendations concerning legal, administrative or other initiatives that would guard against and redress abuses of women's human rights are therefore indispensable.

17. The **organization of information** on women's human rights within reports raises two concerns. First, a number of the reports on country situations have included a separate section on the "situation of women." These sections do not address women's human rights in all of the areas covered with regard to the general situation of human rights in the countries concerned. Reports on country situations should customarily include gender-specific information and analysis in each section dealing with a substantive issue or set of issues. A separate section on women may be appropriate for in-depth analysis of a particular issue or set of issues relating to women's human rights, or for reporting based on an on-site visit. The presentation of a separate section on "the situation of women" as a matter of general practice is inconsistent with a fully integrated approach.

18. Second, a number of reports have presented information on women's human rights in sections titled "women and children." If not integrated into the report as a whole, women's human rights should be discussed in a separate section from the rights of the child, in order to ensure that women are recognized as independent subjects and rights holders under national and international law. Presenting "women and children" as a single category perpetuates the historical focus on women's role as mothers, and reinforces a historical tendency to make concern for women's rights derivative of their role as mothers. There may be situations in which it is appropriate to link information on women and children where the violations are substantively related, such as trafficking in women and girls and certain refugee protection and assistance needs.

19. The reports by the Special Representative on internally displaced persons, the Special Representative on human rights in Cambodia, and the Special Rapporteur on the situation of human rights in the Sudan provide **examples of constructive approaches to women's human rights.** The Special Representatives on internally displaced persons and on human rights in Cambodia have progressively expanded their examination of women's human rights and undertaken analyses of the relationship between violations against women and systemic gender discrimination. Their attention to women's rights in the family and economic, social and cultural rights is particularly welcome in light of the broad effects of women's rights in these areas on their other rights. In reports to the 1996 Session of the Commission, the Special Representative on internally displaced persons presented a well-integrated analysis of violence against women and women's rights to property, education, equality in the family, and participation in decision-making.[7] He also reviewed international norms applicable to the needs of internally displaced women.[8] In previous reports he made detailed recommendations concerning documentation, protection measures, participation in decision-making, and legal reform.[9] Similarly, following a January 1996 mission during which he met representatives of women's groups, the Special Representative for human rights in Cambodia outlined detailed recommendations regarding reform of existing law and review of pending legislation, women's rights to reproductive and sexual health, and labor rights. Among those recommendations were important proposals for action by the Centre for Human Rights.[10]

20. The Special Rapporteur on the situation of human rights in the Sudan has reported on violence against women, women in conditions of forced labor, and de jure gender discrimination. He has followed up his conclusions and recommendations concerning women's human rights by reporting on the Government's failure to act on those recommendations.[11] In his 1995 report to the Commission, the Special Rapporteur reported on rape, malnutrition, forced conversion to Islam and other abuses against women in detention. He noted the need to eliminate the underlying causes of their detention, which include the disadvantaged economic and social status of displaced women.[12]

## (ii.) RECOMMENDATIONS CONCERNING WORKING METHODS AND REPORTING METHODOLOGY

21. The following recommendations concerning working methods and reporting methodology are intended to contribute to enhanced integration of women's human rights. Additional analysis and recommendations on gender-sensitive methodologies are provided in the report of the expert group meeting on the development of guidelines for the integration of gender perspectives into United Nations human rights activities and programmes.[*]

a. ***Gender-disaggregated data*** Where available, gender-disaggregated data should be provided for all categories of information. Gender-disaggregated data is increasingly available in the United Nations system, including information on national situations, and should be obtained whenever possible to support analysis of women's human rights.

b. ***Sources of information*** Sources of information should be expanded to include: women's NGOs; local and national NGOs concerned with minority rights; national government offices for women's affairs; organizations of professional women (such as women lawyers, judges, police, doctors, security and prison officers); and local and national religious groups active in promoting women's human rights. To ensure that violations of women's human rights will be accurately identified and adequately documented, improved methodologies and systems of data collection should be developed by the Secretariat in collaboration with NGOs and governments.

c. ***On-site visits*** Preparation for on-site visits should include: (i) developing contacts with a wide range of sources likely to have information or expertise on the situation of women's human rights; and (ii) gathering gender-specific information on national and local law and practice, including information on cultural traditions. Women with expertise on women's human rights and female interpreters should be included in the delegation. Members of the delegation and support staff should receive training on the gender-specific aspects of human rights in the country concerned as a part of preparation for on-site visits.

During on-site visits, experts should seek information from women directly affected by violations, representatives of women's groups, and officials with expertise on, or responsibility for ensuring, women's rights, including, inter alia, officials involved in the administration of justice and social policy. They should seek access to detention facilities where women are held, refugee camps, shelters for women and other locations where information may be obtained from women directly affected by violations. Experts should request that representatives of women's groups and women from the community be included in meetings with community spokespersons (who are often men). They should seek to ensure that interviews with women are conducted in conditions which will protect their safety and the confidentiality of information. A woman staff person should be present during such meetings.

d. ***Conclusions and recommendations*** Conclusions and recommendations should incorporate gender-specific analysis and detailed suggestions regarding preventive and remedial measures, law reform, and steps that might be taken by the United Nations itself, including its technical assistance and advisory services programmes.

e. ***Follow-up*** Information on government action and/or inaction on prior recommendations concerning women's human rights should be provided in each succeeding report. Follow-up discussions should be conducted through direct contacts with government officials and during on-site visits.

f. ***Urgent action*** The need for a response on an urgent basis should be regularly evaluated with regard to allegations regarding women's human rights. For example, in cases of arbitrary detention of women, an urgent response aimed at preventing rape or other sexual assault may be necessary.

# Part III

## DEVELOPING MORE COMPREHENSIVE LEGAL AND CONCEPTUAL FRAMEWORKS

22. Monitoring and reporting by the experts of the special procedures and advisory services programmes may overlook or misconceptualize the gender-specific dimensions of human rights unless the relationship between systemic gender discrimination and the nature and consequences of violations against women is taken into account. As illustrated by the example of domestic violence, the human rights dimensions of abuses against women become apparent through analysis of this relationship. Violence against women in the family, which was historically regarded solely as a matter to be regulated by national criminal law, is now acknowledged by the world community to engage the international legal responsibility of the state. In 1993, the General Assembly adopted the Declaration on the Elimination of All Forms of Violence Against Women by consensus. The Declaration details a number of steps states should take to eradicate violence against women in the family. Experts can support the progressive development of legal and conceptual frameworks for addressing women's human rights through their fact-finding activities, interpretation of existing standards and, as appropriate, proposals for new standard setting.

23. Several steps toward more comprehensive conceptual and legal frameworks can be suggested based on review of the reports issued since the World Conference on Human Rights. First, **terminology should characterize gender-specific abuses as accurately as possible.** For example, women have been routinely designated a "vulnerable group" in reports by experts. This characterization suggests that women are inherently vulnerable to human rights violations by virtue of their biological sex, obscuring the fact that their vulnerability to abuses is socially determined and a consequence of systemic gender discrimination. Women frequently have been referred to as a vulnerable group in the context of armed conflict, population displacement, and economic conditions restricting access to food, medical care and shelter. In each of these contexts, women's "vulnerability" is the consequence of their subordinate status. Rather than characterizing women as a "vulnerable group," reports should explore the factors which contribute to the likelihood of human rights violations against women, and the nature and consequences of those violations.

24. Second, **gender-specific analysis should be integrated into reporting and recommendations on situations where the institutions of the state have ceased to function or are inadequate for protecting human rights.** Such situations include countries undergoing: transitions to democracy; growth in the numbers of refugees and displaced persons; and a breakdown of the rule of law (including situations characterized by "insecurity"). Transitions to democracy present opportunities to build or rebuild institutional and legal systems that will effectively promote and protect gender equality. Experts examining these situations should identify measures to ensure women's participation in political processes at the local and national levels and promote their roles in building civil society. For example, women's participation in electoral processes can be facilitated through such measures as: quotas and targets for the representation of women among political candidates and among legislators and parliamentarians; voter education for women; and steps to ensure the safety and accessibility of polling places for women. In particular, laws governing nationality and citizenship should guarantee women's independent civil status and equal rights with men to confer nationality on their children.

25. Although many experts have reported on the human rights of refugee and displaced populations, few have examined the grave protection and assistance needs of women. This silence is striking in light of the fact that women, together with children, constitute 80 percent of refugee and displaced populations. The work of the United Nations High Commissioner for Refugees on the needs of refugee women, such as the Guidelines on the Protection

of Refugee Women, should be incorporated into reports and recommendations. Similarly, although experts have reported on violence and insecurity resulting from the collapse of the rule of law in a number of countries, they have often failed to note the corresponding rise in violence against women by both public and private actors in those situations or to recommend measures to reduce such violence.

26. Third, experts should **address violations of women's human rights by non-state actors and examine the scope of state responsibility for those abuses.** Experts of the special procedures and advisory services programmes have increasingly reported on violations by non-state actors, including violence by death squads, communal violence, and violence by religious extremists. This reporting is supported by emerging law. The duty to ensure human rights has been interpreted to create affirmative state obligations to take the steps necessary to enable individuals to exercise their rights. There is a growing recognition that states have certain duties to protect human beings against violations of their fundamental rights.

27. Governments thus may be required to make reasonable efforts to protect key human rights by: establishing adequate legal protection against violations by non-state actors; making good faith efforts to investigate violations by non-state actors when they occur and seeking to punish those responsible; and providing reparations to victims. In the area of violence against women, violence by non-state actors is encompassed in the Declaration on the Elimination of Violence Against Women. The Special Rapporteur on violence against women, its causes and consequences has begun to explore measures the state should take to eliminate violence against women in the family. Experts on country situations and thematic issues should evaluate when violence and other abuses of women's human rights by non-state actors (such as employment discrimination by private enterprises including multinational corporations) engages the international responsibility of the state.

28. Fourth, analysis of women's human rights should **examine the intersection of gender and other factors, including race, ethnicity or socio-economic status.** The concept of "gender-specific" violations does not apply only to violations which occur **solely** on the basis of gender. For example, the involuntary sterilization of women belonging to a racial or ethnic group which suffers discrimination constitutes not only racial discrimination, but also a violation of women's reproductive rights, including their rights to integrity of the person, the highest attainable standard of health and freedom of information, and the right to decide freely on the number and spacing of children. The combined effects of race and gender discrimination shape the nature and consequences of such a violation. Similarly, in many situations of armed conflict women who are members of particular ethnic groups or indigenous peoples are the targets of rape and other sexual assault by security or armed forces. These abuses are directed against women on the basis of **both** their ethnicity and their gender and reflect the tendency in many societies to treat women as the repositories of cultural and/or religious identity.

29. Fifth, experts should routinely assess the **compatibility of national law and practice affecting women's human rights with international norms, including humanitarian norms.** More detailed attention to national law and practice, including draft legislation, would promote greater compatibility of these laws and practices with the general prohibition of gender discrimination and with norms specifically applicable to women. The terminology used to describe violations should accurately reflect their legal characterization. For example, "malnutrition" among women (and among men) should be characterized as the denial of the rights to adequate food and the highest attainable standard of health. There remain inconsistencies among reports by experts in the legal characterization of rape by government agents: some reports have referred to "rape and torture," rather than to "torture, including rape."

30. Experts should consider international norms specifically applicable to women in determining the legal frameworks for their analyses. Among the international norms specifically applicable to women are those contained in the Convention on the Elimination of All Forms of Discrimination Against Women and the Declaration on the Elimination of All Forms of Violence Against Women. The Convention has been among the international instruments cited in an increasing number of reports. Several experts have taken the positive steps of calling for ratification of the Convention or commenting on the status and process of preparing government reports under the Convention.

31. Sixth, the experts of the special procedures and advisory services programmes should **affirm unequivocally that international human rights norms are universally applicable to women's rights.** Any suggestion that it is appropriate to address concepts of women's equality and such matters as dress codes within the framework of religious norms instead of international standards is inconsistent with international human rights law. The international community has repeatedly affirmed that "[w]hile the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."[11]

32. The observance of the religious norms and their embodiment in national law should be viewed as protected manifestations of religion or belief under the Universal Declaration (Article 18) and the International Covenant on Civil and Political Rights (Article 18). The right to manifest religion or belief is not unlimited, however. Both Article 18 of the Universal Declaration and Article 18 of the Covenant on Civil and Political Rights permit restrictions on manifestations of religion or belief if they are necessary to protect the rights and freedoms of others and are prescribed by law.[12] **Restrictions therefore may be imposed on the application of religious law or practice where necessary to protect women's human rights and prescribed by law.**

33. Although states may implement religious law in domestic law, they may not invoke religious law embodied in national law to excuse breaches of their international human rights obligations. The freedom of religion or belief may not be asserted to shield religious law or practice affecting women's human rights from scrutiny. The implementation of international norms in particular cultural contexts may entail their adaptation to culturally specific institutional and legal frameworks and the identification of analogues in indigenous cultural values. However, interpretations of international norms which would undermine the objective of those norms are incompatible with the very notion of human rights, as is the substitution of religious or cultural values for international norms.

34. For example, the concept of the "complementarity" of the roles of men and women cannot be substituted for the basic principle of equality. The principle of gender equality does not require identical treatment of women and men in every case. Indeed, it may require differential treatment in order to achieve substantive equality. The rights of women within the family and in public life cannot be said to be "equivalent" or "complementary" to those of men, however, when greater political and economic power adheres to men's roles. Social or religious norms based on the concept of the "complementarity" of gender roles allocate "equitable" rights to women in relation to the interests of others. Women's rights are thus made derivative of their relationship to others, principally their fathers, husbands, brothers and children. Women's human rights are necessarily exercised within cultural contexts and any assessment of the realization of their human rights must be contextual. However, deference to norms which ascribe rights to women on the basis of their relationships to others is inconsistent with the dignity and integrity of the human person.

35. Finally, experts on country situations should **develop gender-specific methodologies for monitoring and reporting on the realization of economic, social and cultural rights.** Although a number of experts have expanded their reporting on economic, social and cultural rights, gender-specific information and analysis has not been integrated into the majority of those discussions. Women's rights advocates have emphasized the need for greater attention to the economic, social and cultural rights of women, including, inter alia, their rights to: education; health, including reproductive and sexual health; work, including the right to safe and healthy working conditions; adequate food and adequate housing. For example, experts should address gender bias in the allocation of economic resources by the state and within the household and de jure restrictions on women's property rights, including laws governing inheritance and rights to administer property.

36. Monitoring of women's economic, social and cultural rights should take into account not only direct measures to respect, protect and fulfill those rights, but also action to create the enabling conditions for their realization. For example, the Special Representative on human rights in Cambodia called for measures to correct the imbalance in female participation in education and noted the need to provide basic education in mathematics and sciences in day classes rather than night classes, since girls and women often find night classes difficult to attend. Recommendations concerning means of promoting women's economic, social and cultural rights should also take account of the interrelationship among rights. For example, realization of women's right to education is often important to the realization of other rights. The Special Representative on internally displaced persons reported that in Peru, women "speak Spanish less frequently than men and for this reason suffer disproportionate discrimination in their encounters with authorities or when searching for work, including domestic work and petty trading."[*]

37. Analysis of women's economic, social and cultural rights should draw on the practice of the Committee on Economic, Social and Cultural Rights, including its general comments, relating to such questions as specific means for realizing economic, social and cultural rights, minimum core obligations and justiciability. The practice of the Committee on the Elimination of Discrimination Against Women in reviewing States' Parties reports also provides guidance on approaches to implementing those rights, such as initiatives directed toward rural women. In addition, means for realizing women's economic, social and cultural rights may be detailed by reference to: commitments undertaken by governments at recent United Nations conferences, including the Platform for Action adopted by the Fourth World Conference on Women, the Programme of Action of the World Summit for Social Development, and the Programme of Action of the International Conference on Population and Development; the practice of regional human rights bodies; the work of the United Nations specialized agencies, such as the World Health Organization and the International Labour Office; and the practice of states with regard to legislative, administrative and judicial protection of economic, social and cultural rights.

**NOTES**

1 This paper was prepared as UNIFEM's contribution to the meeting (28-30 May 1996) of the special rapporteurs, special representatives, independent experts and chairs of the working groups of the special procedures of the United Nations Commission on Human Rights and of the advisory services programme of the Center for Human Rights. The paper was presented by Donna Sullivan and Sunila Abeyesekera on behalf of UNIFEM.

2 Commission on Human Rights, Resolution 1996/48.

3 U.N. Doc. E/CN.4/1996/105.

4 U.N. Doc. A/50/569, at para. 51 (1995).

5 Beijing Platform for Action, para. 153.

6 Beijing Platform for Action, para. 96.

7 U.N. Doc. E/CN.4/1996/105, at para.25.

8 U.N. Doc. E/CN.4/1996/52 and Add.1.

9 U.N. Doc. E/CN.4/1996/52/Add.2.

10 U.N. Doc. E/CN.4/1995/50 and Add.1-4.

11 U.N. Doc. E/CN.4/1996/93.

12 U.N. Doc. E/CN.4/1996/61.

13 U.N. Doc. E/CN.4/1995/58.

14 U.N. Doc. E/CN.4/1996/105.

15 Vienna Declaration and Programme of Action, chap. III, para. 5.

16 The European Convention for the Protection of Human Rights and Fundamental Freedoms and the American Convention on Human Rights similarly permit restrictions on manifestation of the religion or belief.

17 U.N. Doc. E/CN.4/1996/93, at para. 63.

18 U.N.Doc. E/CN.4/1996/52/Add.1, at para. 98.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Letter dated 24 March 1997 from the Minister for Foreign Affairs of Georgia addressed to the Chairman of the Commission on Human Rights

I have the honour to transmit herewith the English and Russian versions of the "Report on the policy of ethnic cleansing/genocide conducted in the territory of Abkhazia, Georgia and necessity of bringing persons who committed these crimes before justice in accordance with international principles of due process"* of the State Commission of Georgia for Investigation of the Policy of Genocide/Ethnic Cleansing against the Georgian Population in Abkhazia, Georgia.

I would be grateful if the present report could be circulated as a document of the fifty-third session of the Commission on Human Rights.

(signed): I. Menagarishvili

* The annex is reproduced as received in the languages of submission only.

ANNEX

**ON THE REVEALED FACTS OF THE POLICY OF ETHNIC CLEANSING / GENOCIDE CONDUCTED IN THE TERRITORY OF ABKHAZIA, GEORGIA, AND NECESSITY OF BRINGING PERSONS COMMITTED THESE CRIMES BEFORE JUSTICE IN ACCORDANCE WITH INTERNATIONAL PRINCIPLES OF DUE PROCESS**

## CONCLUSIONS

*OF THE STATE COMMISSION OF GEORGIA FOR INVESTIGATION OF THE POLICY OF ETHNIC CLEANSING/GENOCIDE AGAINST THE GEORGIAN POPULATION IN ABKHAZIA, GEORGIA, AND SUBMISSION OF THE MATERIALS TO THE TRIBUNAL WITH INTERNATIONAL JURISDICTION*

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3. Map: data of the ethnic composition of the population of Abkhazia, Georgia, before 1 January 1997 conflict.

**I. General background and assessment of the actions of separatists contained in the documents of the UN Security Council, OSCE Summits, its other bodies and the Council of the Heads of the CIS States.**

I.1. Nearly four years have passed since armed insurgence broke out in a region of Georgia, the Abkhaz Autonomous Republic- a conflict instigated by the aggressive separatists from the leadership of the Autonomy with a view to wresting away from Georgia the land that has been part of it since time immemorial.

Aided by thousands of mercenaries who have poured into the region, mostly from Russia and partly from the Middle East countries with Abkhaz communities and backed by the regular troops of Russia, deployed in Abkhazia since the existence of the USSR, the Abkhaz separatists have managed to seize the whole of Abkhazia successively forcing the Georgian Government troops to withdraw from the region. Their advancement have been matched with barbaric violence endured by the separatists upon the Georgian population of Abkhazia that led to effectively reducing the latter, constituting 46% of the population of the region prior to the conflict, to zero.

The seizure of the territories have been seconded by systematic extermination of ethnic Georgians, principally peaceful civilians-political figures, teachers, doctors, writers and cultural workers. Georgian architectural and archaeological monuments showing that Georgians have lived in the Abkhaz region since ancient times have been destroyed.

Under threat of physical reprisals, the survivors have been driven from their birthplaces and out of Abkhazia, which has been declared an "independent State". As a result over 10 000 people died, most of them peaceful civilians, and some 250,000 Georgians have been forced to flee in order to escape blood-chilling humiliations, torture and shootings.

Besides Georgians, over 100,000 non-Georgians have fled Abkhazia- Russians, Armenians, Greeks, Estonians - and thousands of Abkhaz have left their country, not wishing to be associated with fascist regime. Thus four fifths of the population of the region by 1996 found itself outside it.

Concurrently with continued obstruction and refusal of the refugees and displaced persons in the right to return voluntarily to their homes in accordance with the Quadripartite Agreement signed in 1994 with the participation of the UNHCR the separatists have been prompting the process of settlement of the mercenaries and others in the region. This must alter the demographic composition of the population. Those, who dared to return at their own risk to the Gali region, are being subjected to intimidation, terror and finally expelled.

All these events as reflected in the statements of the State Commission of Georgia for Investigation of the Policy of Ethnic Cleansing/Genocide Against the Georgian Population in Abkhazia, Georgia, has been consistently brought to the attention of the international community, first and foremost of the UN Security Council and the Human Rights Commission(E/CN 4/1994/123, E/CN 4/1995/139, E/CN 4/1996/146, S/1994/225, S/1995/200). The same information have been submitted to the OSCE and Council of Heads of the CIS States.

**I.2. Assessment of actions of the separatists**

**I. a) OSCE Summits and reports of the OSCE mission in Georgia:**

" They ( Participating States of the OSCE ) expressed their deep concern over "ethnic cleansing", the massive expulsion of people, predominantly Georgian, from their living areas and the death of large numbers of innocent civilians." ( Meeting of the Heads of States and Governments of the OSCE participating States, December 4 -5, 1994. " Towards a Genuine Partnership in a New Era, Budapest, Decisions, Regional issues, "Georgia", paragraph 2, S/1994/1435, annex).

" We (OSCE participating States) condemn the "ethnic cleansing" resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia. Destructive acts of separatists , including obstruction of the return of refugees and displaced persons, .... undermine the positive efforts undertaken to promote political settlement of these conflicts " ( Declaration of Lisbon Summit, paragraph 20, December 3 1996)

"The Abkhaz authorities are continuing to implement a policy of violent ethnic cleansing designed to prevail significant repatriation to Gali District and elsewhere in Abkhazia. Tactics used from simple verbal intimidation and short-term arbitrary arrest to murder. Although some of the worst atrocities are believed to have been ordered by Sukhumi... ( OSCE Mission to Georgia, Report on Survey of Human Rights Conditions in Gali District , Republic of Georgia, 19-21 April 1996)

b) The UN Security Council shared all these conclusions and in its relevant resolutions permanently " recalls the conclusions of the Budapest summit of the Conference on Security and Cooperation in Europe regarding the situation in Abkhazia, Georgia," and affirms the unacceptability of the demographic changes resulting from the conflict." (Resolution 1036/1996 January 12, 1996 and Resolution 1065/1996 July 12, 1996)

c) The Council of Heads of the CIS States supported the conclusions of the Budapest summit citing the above - mentioned provision in the Minsk Statement of the Council of Heads of the CIS of 26 May, 1995.

d) On the November, 14 , 1996 the Session of the European Parliament adopted the Resolution which *inter alia* stated that the European Parliament expressing its deep concern over the increased number of refugees from Abkhazia, currently living in the territory of Georgia and the continued process of ethnic cleansing in the region of Abkhazia...

2. Stresses that the final peaceful resolution of the conflict in Abkhazia should be based on the comprehensive political settlement with due respect of the sovereignty and territorial integrity of Georgia within internationally recognized borders.

3. Stresses that the elections in Abkhazia should be held only in the context of the comprehensive political settlement by means of negotiations after the political status of Abkhazia is determined and the full participation of all refugees and displaced persons in the elections is guaranteed.

e) The Security Council Resolution 1096/1997, January 30, 1997 " Recalls the conclusions of the Lisbon summit of the OSCE (S/1997/57, annex) regarding the situation in Abkhazia, Georgia, and reaffirms the unacceptability of the demographic changes resulting from the conflict (paragraph 9 ),the Security Council reiterates its demand that the Abkhaz side accelerate significantly the process of voluntary return of refugees and displaced persons without delay or preconditions..."(paragraph 11)

Hence, the logical outgrowth should be to undertake measures for more full investigation of facts and in case they are confirmed to establish the International Tribunal. However, it did not bring about the effective and adequate response on part of the International Community.

Noteworthy, at the first stage, in autumn, 1993, I. e succeeding the cease-fire and assumption of control over the whole territory of Abkhazia by the Abkhaz separatists, the UN Secretary General at the request of the Government of Georgia sent the fact-finding Mission for establishing facts with a view of examining situation related to the violations of human rights in Abkhazia, including reports on "ethnic cleansing".

The Mission of three representatives of UN Human Rights Center found itself confined to pursue the complicated task - to establish within one week whether the Georgian claims were justified.

In November the Mission submitted its report to the UN Secretary General- the results of its short-term visit to Georgia (Respectively 5 days in Abkhazia and 2 days in Tbilisi).

Undoubtedly, it was quite difficult for the mission to establish to what extent the claims matched the reality as to gather reliable information in Abkhazia, turned into the real "no men land" freed from Georgians would seem nearly impossible.

Regretfully, the mission was not able to manage to get at its disposal evidences of the Georgian refugees and internally displaced persons, fled to the Western Georgia. Nevertheless, the report submitted to the UN Secretary-General basically drew a real picture of the developments notwithstanding inaccuracy in the historical background(S/26725, 24 November 1993).

The Mission attributed the violations of human rights to both parties. However, it noted the massive and cruel character of the acts committed by the Abkhaz forces and their mercenaries against remaining civilians in the territory, where these forces advanced and "peace" was restored(p.p.18, 19, 20, 21, 22, 27, 28, 29, 33-37,38).

In fact, acquiescing that within the given time-limit the Mission could not claim to have been able to undertake comprehensive study and investigation of the situation, it did not go beyond but to state: "On the basis of the available information, the Mission could not establish whether the authorities of either party carried out an active and purposeful policy with a view of cleansing the territories under their control either from the Abkhaz or Georgian population. Only further thorough investigation and assessment will make it possible to establish convincingly the relevant facts." (p.52)

However, this goal was never accomplished having had the negative forbearance upon the whole process of comprehensive settlement of the conflict in Abkhazia, Georgia.

Insufficient activity and consistency of the international community to react on the events in Abkhazia, Georgia, and successful sabotage by the separatists of the recommendations of the UN Security Council and OSCE to work out constructive approach to the political status of Abkhazia "within the state of Georgia and its internationally recognized borders" would seem to give incentive to the authorities in Sukhumi to taking attempt with a view to legalize the results of "ethnic cleansing". Ignoring the opinion of the UN Security Council, European Parliament and OSCE, the separatists held the so- called election of parliament in the depopulated territory of Abkhazia on 23 November 1996 ( nearly 150,000 habitants left out of 540,000 ).

This political show has been condemned by the international community as illegal.

The Summit OSCE in Lisbon has qualified these acts of the separatists as "destructive"

As stated in Resolution 1096 (1997) of the UN Security Council:

"Reaffirming its commitments to the sovereignty and territorial integrity of Georgia within its internationally recognized borders, and to the necessity of defining the status of Abkhazia in strict accordance with these principles and underlines the unacceptability of any action by the Abkhaz leadership in contravention of these principles, in particular the holding on 23 November 1996 and 7 December 1996 of illegitimate and seif- styled parliamentary in Abkhazia, Georgia"

The Ministry of Foreign Affairs of Russia condemned also "the position held by the authorities of Sukhumi", since "the elections" have been held by "Abkhazian side in contravention of universally recognized norms of human rights and fundamental civil liberties and fully ignoring an international opinion ..." The population which was forced in exile from the places of their permanent residence in the course of military actions, could not participate in these "elections". Already by this reason the actions on 23 November must not be regarded neither legitimate by the law, nor justified politically." ( Statement of the Ministry of Foreign Affairs of Russian Federation on 23 November 1996 ).

Thus, the syndrome of impunity infecting the separatists, prompts them to commit new brutalities, to refuse the refugees and IDPs back to the places of their permanent residence and to the actions with a sole goal of legalization their fascist political regime.

Meanwhile, as it is clear from the above-mentioned, international community of states unanimously recognized, that the Abkaz separatists still are pursuing the "ethnic cleansing" by using utmost barbaric methods in the territory under their control and carrying out massive destruction and forcible expulsion of the Georgian population, which comprised half of the whole population of Abkhazia before the conflict.

Before proceeding to the concrete facts, providing the evidence of flagrant violations by the separatists of the norms of the international humanitarian law, it is necessary to consider the issue as to whether the "ethnic cleansing", referred in the above-mentioned documents and that of pursued in Abkhazia, presents itself as the crime against humanity and the form of genocide, thus, giving necessary ground for bringing those guilty in the crimes before the International Tribunal.

While dealing with the issue , the Commission has been deriving underpinnings for its deliberations from the Final Report of the Special Commission of Experts ( S/1994/674, 27 May 1994 ), established by the UN Secretary-General in accordance with the UN Security Council Resolution 780 (1992 ) on 6 October 1992 to examine and study, in particular, the information submitted for executing of the UN Security Council Resolution 771 (1992) and 780 (1992) in order to submit to the Secretary-General its own conclusions on the facts of serious violations of Geneva conventions and international humanitarian law, committed in the territory of former Yugoslavia, in particular, of the practice of "ethnic cleansing" ( henceforth, Final Report would be cited only referring the number of the Security Council document-S/1994/674).

## II. Ethnic cleansing in the context of crimes against humanity

### II.1. Notion of crimes against humanity

The notion and concept of these crimes were first recognized in the 6th paragraph of the Statute of the International War Tribunal (August 8,1945) and separated from the concept of the crimes against peace and violations of the laws and customs of war.

The hallmark of the crimes against humanity as of the criminal acts are "crimes directed against the civilian population, in particular, murder, extermination, imprisonment, deportation and other inhuman acts... persecution on political, racial and religious grounds with a view of implementation, or linkedwith any other kind of crimes under the Tribunal jurisdiction, irrespectively of the fact, whether these actions were considered as violations of internal law committed or not in the country." (par.6)

Hereby, it was acknowledged, that the leaders, coordinators, instigators and accomplices, having participated in the designing and implementation of the common plan or conspiracy, directed primarily at committing any of the above-mentioned crimes, are responsible for all actions conducted by the individuals with a view of implementing the plan" and the official post held does not waiver them from the implicated responsibility. (par.6, 7 of the Statute).

These principles reaffirmed by the UN General Assembly Resolution 95 (1), December 11, 1945, constituted a part of the international community's *opinio juris* and encapsulated the universally recognized norms of international customary law.

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide singles out acts that constitute the crimes, directed primarily against the national, ethnic, racial and religious groups of the civil population, although the genocide remained one of the most atrocious and gravest form of the crimes against humanity.

Fifty years later, when the outbreak of interethnic armed conflicts, in particular of intra-state character and the increased threat of the aggressive separatism outburst in the form of crimes against humanity, unthinkable even 50 years ago, led to re-emerging of international tribunals - International Tribunal for the prosecution of persons responsible for serious violations of the norms of international humanitarian law committed in the territory of the former Yugoslavia since 1991 (UN Security Council Resolution 827 (1993) and the Tribunal for the sole purpose of

prosecuting persons responsible for genocide and other such violations of international humanitarian law committed in the territory of Rwanda and for Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994 (UN Security Council Resolution 995 (1995) were established.

The Statutes of the Tribunals generalized the past practice and developed the concept and definition of the crimes against humanity. Moreover they extended jurisdiction to the responsibility of persons committed violations of the Geneva Conventions of 1949 and Protocols of (1977), and the laws and customs of war.

The crime of genocide is dealt in a separate paragraph(4), preceding the crimes against humanity (5).

As a matter of fact, the Tribunal grounded its jurisdiction into the already existing conventional and customary norms without codifying them although noteworthy the Tribunal's attempt to extend the list of acts coming under the ambit of the notion of crimes against humanity.

Article 5 of the Tribunal while referring to the crimes, committed on the territory of the former Yugoslavia states:

"The International Tribunal shall have the power to prosecute persons responsible for . . . the crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population" (Article 5,Statute of the ITY), including undoubtedly national, political, ethnic, racial or religious groups. (S/1994/674, par. 72). Regarding the crimes against humanity the International Tribunal for Rwanda(ITR) stresses the prosecution of persons responsible for. . . the crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds." (Par. 3) i.e. it does not link these crimes primarily with armed conflicts. Acts to be considered hereby are correctly interpreted by the experts as " principles of International Law treated *erga omnes* , for, as the International War Tribunal in Nuremberg defined, there exist "elementary norms of humanity" which must be recognized in all circumstances. This principle was confirmed by the UN General Assembly on December 11, 1945 (Resolution 95(1) (S/1994/674).

### II.2. The nature of the armed conflict

Further, the experts have held that crimes against humanity are not limited to the situations of international armed conflict and are applied in relation to all armed conflicts, including internal-civil wars and insurgence as well as any *casus mixtus* of internal and international armed conflicts. Most importantly, crimes against humanity are not any more linked with crimes against peace or violations of laws and customs of war(*ibidem*, par.75).

### II.3. Persons under protection

Crimes against humanity target peaceful population I. e persons not taking part in military actions.

However, in view of the experts, there are situations, where inhabitants of certain buildings, quarters or villages are searched and executed. In these circumstances, the attempt of the head of the family to defend himself and his relatives does not lead to forfeiting his status of civilian(S/1994/674, par.77).

**II.4. Widespread and systematic nature of the acts**

Isolated acts constituting offenses, such as extra-judicial execution or other common crimes punishable under municipal law, are not qualified as crimes against humanity by themselves. The acts must be part of a policy of persecution or discrimination. In addition, the acts must be carried out in a systematic way or by means of a mass actions. Thus, the number of victims and perpetrators are characteristically high. It is the systematic process of victimization against the protected group which is essential. It is the overall context of large-scale victimization carried out as part of common plan or design which goes to the element of systematicity.

It should not be accepted at face value that the perpetrators are merely uncontrolled elements, especially not if these elements target almost exclusively groups also otherwise discriminated against and persecuted. Unwillingness to manage, prosecutes and punish uncontrolled elements maybe another indication that these elements are, in reality, but a useful tool for the implementation of a policy of crime against humanity.(S/1994/674,par.84-85).

**II.5. Classification of the Acts**

Article 5 of the Statute of International Tribunal for Yugoslavia and Article 3 of the Statute of International Tribunal for Rwanda enlist the following acts which constitute crimes against humanity:

(a) Murder;
(b) Extermination;
(c ) Enslavement;
(d) Deportation;
(e) Imprisonment;
(f) Torture;
(g) Rape;
(h) Persecutions on political, racial and religious grounds;
(I) Other inhumane acts.

Article 18 of the draft Code of Crimes Against Peace and Security of Peoples stipulates: crimes against humanity mean the following acts, when they are systematic, and widespread and are instigated or directed by government or any organization or group:

a) murder;
b) extermination;
c) torture;
d) enslavement;
e) persecutions on political, racial and religious grounds;
f) institutionalized discrimination on racial, ethnical and religious grounds, including

violations of basic human rights and freedoms and serious harm inflicted upon the part of the population;

g) involuntary deportation and forcible removal of the population;

h) extra-judicial arrests and involuntary disappearance of persons;

I) rape, forcing to prostitution and other forms of sexual harassment;

j) other inhumane acts, causing serious bodily and mental harm as well as harm to human health and dignity such as mutilation and serious bodily injury;

Thus, there has been established clear concept and definition of crimes against humanity, principles of which are of *erga omnes* character and shaped as universally recognized principles of international customary law, having the absolute legal effect -*jus cogens*.

In the event the facts of committing these crimes are established the international tribunal should be set up for persecution of persons guilty in the crimes,given the state is either by itself responsible for the perpetrations or not in a position to exercise its jurisdiction over the territory, where the crimes are committed.

This right of the state is reproduced in the Genocide Convention:

" Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the acts was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction. (ArticleVI). According to Article VIII empowers any Contracting Party to call upon (underlined by the authors of the report) the competent organs of the United Nations to take such actions under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III."

Undoubtedly, this right should be vested with the state, which is fighting against the crime of genocide in its territory. Significantly, the UN Security Council decided to establish the International Tribunal on the request of the government of Rwanda.(UN Security Council Resolution, S/RES/955, November 8, 1995 par 1)

### II. 6. "Ethnic Cleansing" - crime against humanity

This crime though being widely attributable to the ethnic and other intra-state conflicts is missing from the list of "crimes against humanity". Nevertheless quite established *opinio juris* and judicial practice offer sound ground for regarding "ethnic cleansing" as a form of "crimes against humanity".

The UN experts, having examined character of the crimes committed in the territory of former Yugoslavia, held that "ethnic cleansing" is a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas. To a large extent, it is carried out in the name of misguided nationalism, historic grievances and a powerful driving sense of revenge. This purpose appears to be the occupation of the territory to the exclusion of the purged group or groups(S/1994/674, para 130). It is carried out by means of murder, torture, arbitrary arrest and detention, extra-judicial executions, rape and sexual assaults, confinement of civilian

population in ghetto areas, forcible removal, displacement and deportation of civilian population, deliberate military attacks or threats of attacks on civilians and civilian areas, and wanton destruction of property (S/25274, para 56).

The International Tribunal for former Yugoslavia has several times held that "the acts target the members of an identified civilian population, conceived as one or more groups, national or political; the commission of the acts follows the same pattern; the acts planned and organised at a State level. They appear to have a common objective: permitting the establishment of "ethnically pure" territories and thus creating a new State. The acts constitute the means to implement "the policy of ethnic cleansing"... The Trial Chamber therefore considers that the above mentioned acts can more appropriately be characterized as a crime against humanity"(International Tribunal for Former Yugoslavia. In the Trial Chamber, Prosecutor v. Radovan Karadzic and Ratko Mladic, Review of the Indictments Pursuant To Rule 61 of the Rules of Procedure and Evidence, para. 90-91, 11 July 1996).

As stated in the report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 (1993) concerning establishment of the International Tribunal for Former Yugoslavia: " Crimes against humanity refer to inhuman acts of a very serious nature, such as willful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. In the conflict in the territory of the former Yugoslavia, such inhumane acts have taken the called :ethnic cleansing" and widespread and systematic rape and other forms of sexual assault, including enforced prostitution"(S/25704, 3 May 1993, Par. 48).

In its resolution 1996/71 of the Human Rights Commission:

"I.1 Condemns in the strongest terms all violations of human rights and international humanitarian law during the conflict, in particular in areas which were under the control of the self-proclaimed Bosnian and Croatian Serb authorities, in particular massive and systematic violations, including, inter alia , systematic ethnic cleansing, killings, disappearances, torture, rape, detentions, beatings, arbitrary searches, burning and looting of houses, shelling of residential areas, illegal and forcible evictions and other acts of violence aimed at forcing individuals from their homes, and reaffirms that all persons who plan, commit or authorize such acts will be held personally responsible and accountable;

I.2. Expresses its outrage that the abominable, deliberate and systematic practice of rape has been used as a weapon of war in the Republic of Bosnia and Herzegovina, recognizes that rape in this context constitutes a war crime..."

The Commission expressed its deep concern over actions, "that undermine the principle of right to return, including enforcement of legislation which restricts rights to claim "socially owned" property throughout the State of Bosnia and Herzegovina, unjustified evictions of persons from their homes and resettlement of displaced persons in homes which, under the agreement reached in Geneva on 18 March 1996, should remain vacant for six months"( I.3(b)).

This is not-exhaustive list of acts, that the Commission condemned, having clearly defined the structure of acts that come under the ambit of international crimes commission and invoke international criminal responsibility.

All stated above offers sound ground to assert that 'ethnic cleansing" is a crime against humanity and as such is subject to the competence of the international tribunal.

## III. Genocide

### III.1. Genocide - gravest crime against humanity

At present, there seems no room to question that Genocide is one of the gravest crimes against humanity. The Charter of the International Military Tribunal of 8 August 1945 contains clear stipulations concerning the acts that constitute crimes against humanity(see par. II.1). Consequently, the Genocide has been singled out as a crime against humanity to be later reflected in the relevant Convention.

The ITY (par.4) and ITR (par. 2) and Draft of the CCPSP ( article 17) separately deal with this horrendous and atrocious crime against humanity, manifested in the acts, that are committed not with the mere purpose of mass and systematic persecution "of any civil population" and with the intent of their physical extermination, but most importantly, target any national, ethnical, racial or religious group.

Parties to the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, referring to the UN General Assembly resolution 95(1) of 11 December 1946, which declares that "Genocide is a crime under international law, contrary ... to the aims of the United Nations and condemned by the civilized world " (preamble) , "reaffirmed", that

"The genocide ... is a crime under international law which they undertake to prevent and to punish".(Article 1 )

In this respect, there is a need to draw close attention to the term "reaffirm": the participating states do not create a new precedent, but derive support from the already existing concept of crime for having the *erga omnes* customary norm translated into the conventional one.

The experts stressed, that the objectives of the Convention are to safeguard the very existence of certain human groups and to affirm and emphasize the most elementary principles of humanity and morality. In view of the rights involved, the legal obligations to refrain from genocide are recognized as *erga omnes* (S/1994/674, par.88).

Importantly, "Genocide is a crime under international law regardless of whether committed in time of peace or war"(Article 1).

"Thus , irrespective of the context in which it occurs (for example, peace time, internal strife international armed conflict or whatever the general overall situation) genocide is a punishable international crime." (S/1994/674, par.91)

### III.2. Acts identified as crime of genocide

These acts, as a rule, are automatically reproduced from the Article 2 of the Convention.

The following three forms of the crime of genocide out of five, come within the scope of the document.

a) Killing the members of the group;

b) Causing serious bodily or mental harm to members of the group;

c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

The main objective of these acts should be the intention " to destroy on whole or in part, a national, ethnical, racial or religious group, as such"(*ibidem*).

Thus, for the crime defined as genocide, the whole destruction of the group is not required and the term "partial" is interpreted by the experts to indicate that "destruction of a group in whole or in part does not mean that the group in its entirety must be exterminated... If a group has its leadership exterminated, and at the same time or in the wake of that, has a relatively large number of the members of the group killed or subjected to other heinous acts, for example deported on a large scale or forced to flee,. exposing "the intent to destroy the fabric of a society through the extermination of its leadership, when accompanied by the acts of elimination of a segment of society, can also be deemed genocide"(S/1994/674, par.94).

Remarkably, "it is not a condition that the victim group be a minority, it might as well be a numerical majority"(S/1994/674, par. 95/96).

### III.2. Intent

It is the element of intent to destroy a designated group in whole or in part, which makes crimes of mass murder and crimes against humanity qualify as genocide. This is the intent against a number of individuals, i. e. the crime against the collectivity, and not against one, two or more members of the group, the intent to destroy the group "as such". (S/1994/674/par.97)

Consequently, there must exist a clear , premeditated objective - to destroy and to extinguish an undesirable national, ethnical, racial, or religious group from the population of the state , region either by means of physical extermination as such, or physical extermination of the part of group and forcible expulsion of the others from the defined region, district or state in whole.

Deriving support from the above mentioned provisions the International Tribunal for the Former Yugoslavia stressed, that "The intent which in particular to the crime of genocide need not be clearly expressed... the intent may be inferred from a certain number of facts such as the general political doctrine which gave rise to the acts possibly covered by the definition in Article 4, or the repetition of destructive and discriminatory acts. The intent may also be inferred from the perpetration of acts which violate, or which the perpetrators themselves consider to violate, the very foundation of the group-acts which are not in themselves covered by the list in Article 4 (2) but which are committed as part of the same pattern of conduct." ( "Review...", 11 July 1996, par. 94)

### III.4. Ethnic Cleansing as a Form of Genocide

Investigating the character of the crimes on the territory of the Former Yugoslavia, the Trial Chamber of the ITY concluded, that

" certain methods used for implementing the project of "ethnic cleansing" appear to reveal an aggravated intent as, for example, the massive scale of the effect of the destruction. The number of the victims selected only because of their membership in a group would lead one to the conclusion that an intent to destroy the group, at least in part, was present. Furthermore, the specific nature of some of the means used to achieve the objective of "ethnic cleansing" tends to underscore that the perpetration of the acts is designed to reach the very foundations of the group pr what is considered as such."

The Trial Chamber therefore invited the Prosecutor to consider broadening the scope of the characterization of genocide to include other criminal acts... than those committed in the detention camps ("Review", par.95)

The Judge of ITY Foad Riad, having considered the indictment, submitted by the Prosecutor, concluded that,

"The policy of "ethnic cleansing" presents, in its ultimate manifestation, genocide characteristics. Furthermore, in this case, the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, specific to genocide, may clearly be inferred from the gravity of the "ethnic cleansing"...I. e. principally, the mass killings. Thus, the charge of genocide is indeed appropriate."(Case N IT 95-18-I The International Criminal Tribunal for the Former Yugoslavia. Before a Judge of the Trial Chamber. The Prosecutor V. Radovan Karadzic, Ratko Mladic. Review of the Indictment.16th day of November, 1995)

Later, on May 16, 1996 Trial Chamber, having considered the nature of the crimes, presented by the Prosecutor, classified them as follows:

a) the killing of members of the group or groups;
b) the causing of serious bodily or mental harm to the member or members of the group or groups occurred though inhumane treatment, torture, rape and deportation;
c) the deliberate inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part was put into effect in the detention camps and through the siege and shelling of cities and protected areas."

The Trial Chamber ascertained, that in time of specification of the nature of the acts, included in the "ethnic cleansing", it's necessary to discover whether the pattern of conduct of which is seized, namely "ethnic cleansing", taken in its totality, reveals such a genocidal intent." ( Review", par. 93)

Undoubtedly, these conclusions were in considerable part predetermined by the UN General Assembly Resolution, which recognized the "ethnic cleansing" as one of the forms of genocide (Res.47/121, December 17, 1992).

The UN Commissions on human rights and its Sub-Commission on prevention of Discrimination and Protection of Minorities frequently refer to this resolution.

In the Resolution (1993/8) regarding the "Punishment of the crime of genocide" the Sub-Commission welcoming the General Assembly resolution Res 47/121, in which the Assembly stated that the policy of ethnic cleansing is a form of genocide and urges States Members of the United Nations to make every effort to bring to justice, in accordance with internationally recognized principles of due process, all those individuals directly or indirectly involved in the territory of the former Yugoslavia or in any other part of the world. (E/CN.4/Sub.2/1003/45).

In the Resolution " The situation in Kosovo" the Sub-Commission

" Strongly condemns" the specific violations , "most of which are committed in connection with the systematic policy of "ethnic cleansing" and genocidal acts in the areas of the former Yugoslavia under the control of the self-proclaimed Serb authorities, and which include mass killing, torture, disappearances, rape, and other sexual abuses against women and children, the use of civilians as human shields on confrontation lines and as mine clearers, arbitrary executions, the destruction of houses, religious objects and cultural and historical heritage, forced and illegal evictions, detentions, arbitrary searches and other acts of violence"(Par.3) The Sub-Commission strongly reaffirms in order to achieve a peaceful and lasting solution and to improve the human rights situation in Bosnia and Herzegovina, the right of return to their homes in safety and dignity of all refugees and displaced persons victims of the "ethnic cleansing" and declared that the practice and consequences of "ethnic cleansing" should in no way be legitimized"(Par.8)

These notions serve as a stand out for all the following resolutions of the Sub-commission and Commission, in particular referring to the acts, falling under the term "ethnic cleansing" as to the crimes against humanity, that sometimes border and in certain cases fully match the "genocidal acts".

The Commission at its 49th session reminded, that in its resolution 1992/S/-2/1 called on all states to consider to what extent the acts committed in Bosnia and Herzegovina and in Croatia constituted genocide and took note of the resolution 47/121 of the UN General Assembly of December 17, 1992, which *inter alia* stated that " the heinous practice of ethnic cleansing constitute one of the forms of genocide (Res. Human Rights Commission 1993/7 on February 23, 1993)

The same approach is employed in the resolution of the Commission 1995/89 on March 8, 1995 ( E/CN.4/1995/176 par.3,6,8,18,22).

Thus , the "ethnic cleansing" is not only one of the forms of crimes against humanity falling under the jurisdiction of the International Tribunals , but constitute one of the forms of genocide so that the relevant provisions of the Convention on Prevention of the Crime of Genocide and punishment " should apply to it.

Consequently, it could be stated that the "ethnic cleansing" in its extreme, aggravated form, when it amounts to the crimes against humanity as a whole and genocide in particular, match the acts, referred by International Law under the jurisdiction of the Courts with international competence, more even so as the state is not capable to punish the guilty due to having temporally lost the control over the region under the control of the individuals, carrying out the "ethnic cleansing" - genocide and appeals, therefore, for the assistance to the international community of states.

**IV. Genocide of the Georgian Population of Abkhazia, Georgia, - the crime against humanity manifested in the form of ethnic cleansing**

(The facts of criminal acts of the separatists stated herewith are based on the evidence of 15000 witnesses and victims of these acts, also on the considerable amount of photo and video materials collected by the General Prosecutor's office of Georgia in the process of the investigation and contained in more than 100 volumes).

**IV.1 Criminal intent to exterminate the Georgian population of Abkhazia in the context of the official ideology of the separatists.**

" From 1990-1992, in the Abkhaz Nationalist press, radio and television, in the lecture rooms of the University, in institutes and schools... the image of Georgia as the enemy was created in the public consciousness. This enemy was any Georgian, including the next-door neighbor. He was blamed for all the troubles of the Abkhazian people... He, allegedly, grabbed everything, ribbed everyone. He drank the blood of Abkhazian." (S. Chervonnaia. Abkhazia - 1992. The postcommunist vandea. Moscow. 1993. p.82.)

The ideas, contained in scholarly analysis, public statements of writers and politicians figures and slogans employed at the public rallies organized by the Abkhaz separatists to Soviet Authorities and Communist Party bodies during the period of existence of the Abkhazian Autonomous Republic indicate deliberate and premeditated nature of barbaric acts carried out against the Georgian population of Abkhazia. It is important to note that a disorientation of the international community was already underway during the Soviet era during which the Soviet press and broadcast media were often employed to disseminate anti-Georgian venom, a practice which greatly intensified during the period of 1989-1992.

The separatist ideologists have attempted to assert, that Abkhazia has never been a part of Georgia, and that its independence is of centuries old standing. Continuing the distortion of facts, they keep holding that the Democratic Republic of Georgia(1918-1921) first occupied Abkhazia, and then Soviet Georgia to which Abkhazia was joined in an agreement re-annexed it again in 1931, unilaterally transforming its relation with the Georgian SSR from to one of autonomy within the larger republic.

Nevertheless, according to A. Gogua (Druzhba Narodov, 1989 N5 p.159) Georgia "having preliminarily exterminated or bled white the intelligentsia, closed down Abkhazian schools, resettled more than 200 000 inhabitants from other parts of Georgia onto the best Abkhazian lands which resulted in the assimilation of part of the native population, they plunged one of the most ancient peoples of the Caucasus and its culture into a state of shock, turning its autonomy into a mere facade". The same thought is reiterated by G. Tarba, B. Guruli and B. Sagaria as well, only their accounts differ by the numbers 100 000 and 60 000 respectively.

This is a rather convenient case of amnesia with regard to the fact that Abkhazia has for centuries been a part of the Georgian State, during the period of the unified Georgian Kingdom ($11^{th}$ -$15^{th}$ centuries) as well as during the subsequent years of disintegration. This amnesia conceals the fact that the Abkhaz and Georgian people have lived side-by-side for centuries, the territory of Abkhazia being full of archaeological and architectural evidence containing Georgian

inscriptions that date from ancient days attesting to this fact. For centuries Abkhazia's political, democratic and ecclesiastical language of choice has been Georgian. Even a letter to the Emperor of Russia from Abkhaz Authorities asking for protection was written in Georgian.

In blaming Georgians for the forcible reduction of the Abkhaz population to a minority, Abkhaz separatists conceal the fact that by the end of the 19th century the Russian Empire forced thousands and thousands of Abkhazians into exile, a process widely known as the Mahajir movement. This was the punishment of Abkhazs for their cooperation with the North Caucasian peoples in the Caucasian War. Enough to shatter any myth of an idyllic Abkhaz-Russian relationship.

It is an indisputable fact that for over a century the Georgians have constituted the majority in the region. In 93 years (from 1896-1989) their numbers increased only seven times, against Russians and Armenians increase of 65 5 and 67.7 times respectively.

Remarkably, in 1992, in the wake of the conflict, the reference book containing surnames and addresses of all Georgian families, residing in Abkhazia, has been published, to be, in fact, further used as a kind of guideline facilitating extermination of the Georgians.

Significantly, the slogan " genocide for the genocide" has become a hallmark of all publications.

**IV.2 Political, civil, social and cultural rights of Abkhazs prior to the armed conflict(August 14, 1992)**

Abkhazia enjoyed the status of autonomous republic within Georgia, i.e. the state entity with legislative, executive and juridical bodies exercising supremacy within the competence defined by the constitutions of Georgia and Autonomous Republic of Abkhazia. The Constitution of the Abkhazian Autonomous Republic was the only basic law among the autonomous republic in the USSR to declare Abkhaz language one of the official languages of the Autonomy..

For out of the total population of the region Georgians comprised more than 47% with other non-Abkhazs 35% and Abkhaz themselves 17% however, the latter prevailed in the government and party bodies of the Autonomy;

The Supreme Soviet- 57 Abkhazs, 53 Georgians and 14 Russians;

In municipal and regional councils Abkhazs held 1/3 of the positions;

Of the members of the Council of Ministers and the City Committee of the Communist Party, more than half were Abkhazs. Out of twelve Ministers of the government of the Autonomy, eight were Abkhaz;

Out of eight Chairman of State Committees, five were Abkhaz. Out of eight city and regional procurators Officers, five were headed by Abkhaz.

By 1990, the Abkhaz were widely represented in the Government and Party bodies of Georgia. Furthermore, in 1991 the separatists through political blackmail managed to pass a law granting the Abkhaz -28 Parliament seats out of 65, with Georgians 26 seats, and the remaining population 11 seats.

Abkhazia ranked number one in the USSR in terms of number of books per capita in the native language. While by 1970 all schools of autonomous republic elsewhere in the northern Caucasus had been instructed exclusively in Russian, in Abkhazia there were 25 schools teaching in Abkhazian, as well as numerous schools with mixed Russian-Abkhazia-Georgian instruction. Until recently, the education of more than 4000 students was available in Abkhaz language, including in the Abkhaz State University.

Abkhaz National Television, Radio, Repertory Theater, Folk Song and Dance Company, A Cappella Company, and numerous other creative companies were state supported and subsidized.

Besides the Abkhazian Institute of History, Language and Literature of the Georgian Academy of Sciences, about twenty scientific-research institutes with 5000 scientists, 500 doctors and candidates of sciences functioned in the Autonomous Republic.

The fact, that the Abkhazia was and remained a constituent part of Georgia did not give rise to doubts neither during the existence of the USSR and its collapse nor to the founders of CIS and international community. According to the Alma-Ata Agreement (December 21, 1991) the sovereignty of Georgia along with other former Soviet Republics was reaffirmed within its borders, including the Abkhazian Autonomous Republic.

The territorial integrity of Georgia was later affirmed by the United Nations, as it accepted Georgia to its membership on July 31, in 1992. However, this fact, did not stop the separatists, long waiting for convenient moment with the view of implementing their aggressive plans. To this end they have finally embarked upon manipulation of the right to self- determination.

As widely known, modern international law prohibits the exercise of the right to self-determination with the view of impediment of territorial and political integrity of sovereign, independent states, which observe the principle of equality and self-determination of peoples and by virtue of this have government, representing interests of all people residing in the territories without any discrimination (Declaration on Principles of International Law ... "Vienna Declaration and Plan for Action" Doc. UN A/Conf/157/23 - July 12, 1993).

**IV.3 Legal and military preparations for implementing the plan "Abkhazia without Georgians"**

Availing the opportunity, that with the inevitable dissolution of the USSR the Russian reactionary forces called upon the separatists to undermine from inside the fight of the Union Republics for establishing the democratic and sovereign states, the Abkhaz separatists began to transcribe the ideology into the so called "legal act-making": abolished the laws of the Georgian Republic on the territory of Abkhazia, one by one adopted the laws in contravention of the both Georgia`s and Abkhazia`s constitutions.

On August 25, 1990 the Abkhazian Autonomous Supreme Soviet adopted the Declaration of "Governmental Sovereignty of the Abkhazian Soviet Socialist Republic", which in essence amounted to secession from Georgia, and unilaterally violated the Constitutions of the Abkhazian Autonomous Republic and the Republic of Georgia. According to the Declaration " in the Abkhazian Autonomous Supreme Soviet the constitutional advantage of the nation, which gave the name to the republic, is guaranteed."

The conspirators revealed the separatist aims in the Decree " About Legal Safeguard of Abkhazian Statehood" of August 26,1990. On August 27, 1991, the separatists made some amendments in the Law "On Elections of Deputies of the Supreme Soviet" by resorting to the blackmail. As a result of these actions, the Abkhazs artificially attained a majority in the Supreme Soviet, thus abrogating the rights of Georgians- the majority of the population in the autonomous republic.

In 1991-1992, in contravention to the provisions of the Autonomous Republic of Abkhazia, several normative acts and decrees were passed bringing about the diminution of the jurisdiction of Georgia and violation of its territorial integrity. In particular, on "Monetary-Credit Regulations in the Republic of Georgia", "The National Bank of the Republic of Georgia", "Banks and Banking", "On Laws in the Republic of Georgia" and others. Documents additionally adopted included the normative acts on establishing the Inter- Economic Committee and the Committee for the Inter - Republic Relations, customs service, the Abkhazian national monoethnic guard, the Abkhazian battalion "Aidgilara" of the Confederation of Mountain People of Caucasus, on transferring jurisdiction over the prosecutor, military and militia units of the Ministry of Internal Affairs, security bodies, state property and privatization committees. Unfortunately, the reaction to such legal "subversion" by Georgian authorities was neither timely nor adequate. Moreover in July 1992 by ignoring the elementary constitutional norms against the Georgian members of Parliaments will, the separatists abolished the Abkhazian Constitution of 1978 by a simple majority of votes and "restored" the so called Constitution of 1925 of the Abkhazian SSR, that had never been in effect in the opinion of the specialists. With the aim of changing the democratic situation "peacefully" and to mechanically increase the Abkhazian population, the separatists adopted discriminatory decrees "On registration restriction of population in Abkhazia," then "On the Changing the Surname and Nationality" almost prohibited any non-Abkhazian population to live in the region. These decrees did not apply to foreigners who could, without any identification documents, claims to be Abkhaz. The granting of residence and registration of foreigners were carried out in a very simplified and confidential way.

Only on March 1992 in Sokhumi, Ochamchire and other regions, the right to permanent residence was granted to 100 people from the number of foreign countries. Such illegal registration has continued on a larger scale. The Separatists awarded mercenaries the right of permanent residence as well as unlimited freedom of looting in Abkhazia.

In Moscow, St. Petersburg, Krasnodar and Stavropol Territories, the Far East, some of the local authorities encouraged and supported the idea of aggressive separatism. Some republics of the North Caucasus(Russia), especially in the Chechen Republic, also lent direct military support for the notion of aggressive separatism in Abkhazia. They established recruiting centers for drafting "volunteers". Consequently, Abkhazia became a place of refuge for the worst sort of gangsters and killers.

A special "role" in recruiting and financing mercenaries was played by the Confederation of Mountain People, which declared that Georgia and its capital Tbilisi were zones of subversion and the main target for terrorist actions. It is established that two-thirds of the whole number of the separatist armed formations were paid mercenaries.

They were primary addressees of Mr. V. Ardzinba's promises to granting to the mercenaries "citizenship and homes"(Izvestia newspaper of 19 October, 1992). In the course of preparations for war the Abkhaz separatists purchased weaponry and heavy artillery at bargain prices from the corrupt leadership of the Russian armed forces deployed in Abkhazia with support being rendered to them by the influential groups from the political and military structures of Russia. Moreover, soldiers and officers of the troops mentioned above took part in military actions.

**IV. 4. Breakout of the armed conflict**

"If one evaluates the degree of hysteria, employed by the Abkhaz side, it seems to me that the Abkhaz side is to be blamed for the conflict as with such intolerance, exposed by the separatist movement it would have been more surprising if these things did not happen. As far as I am competent to judge and I found myself nearly in the center of events, these clashes were premeditated and instigated by the Abkhaz side. The essence of the conflict is not in depriving the local authorities of their prerogatives as it is portrayed by the Gudauta regime, but carrying out purposeful military action, not spontaneous, but well prepared and planned. The design, objectives and means of the action were considered long before emerging of "the hot spot" ( eyewitness of the resident of the main intelligence department of the Ministry of Defense of the Russian Federation-Mikhail Demianov, "Two Truths are Non-existent", Tbilisi, 1996, also recorded on the videotape).

These actions were facilitated by instability in West Georgia where supporters of ex-President were continuing their joint efforts with the Abkhaz separatists to undermine the democratic government with terrorism leveled at highway and railway traffic, kidnaping members of the Georgian government and holding them hostage in Abkhazia. In the mid-1992 in the territory of Abkhazia the railway and highway traffic as well as the air transport seized operating. The robbery of trains carrying passengers and goods to both Georgia and Armenia increased dramatically having become a normal sequence of life.

At the railway stations of Gagra, Bzipi, Gantiadi, Gudauta, Dranda, Gali, Achigvara, Salkhino, Sokhumi, Ochamchire, Ingiri, Zugdidi and other stations, separatists paramilitary formations launched multiple raids and made off with 1,923 carriages of goods, destined for Georgia and Armenia at a total value of 11 bln. Roubles (by the rate of rouble at that time). In the first half of 1992 alone, there were 1142 criminal cases of attacks and bombing.

With the aim of creating disorder, anarchy and chaos in the legitimate state structures of the republic, terrorists and saboteur groups methodically threatened the lives and health of officials and the population of Abkhazia, violating their human rights.

In the summer of 1992 there were 2 cases of officials being kidnapped ( a. Kavsadze and R. Gventsadze) in the Western Georgia and kept in Abkhazia. At the same time, a Georgian official, Kandid Gogua have been deliberately killed in the western part of Georgia. These acts had grave consequences.

It has become necessary to dispatch again troops into Abkhazia from where they had been relocated in February 1992, having spent a month in the region with a view of restoring order. In any event, it could not be disputed that the government is entitled to dislocate troops at any point within the territory of the state, including that of the autonomy.

As stated by Mr E. Shevardnadze at the meeting of the State Council of Georgia: "Within one-two months period the security and delivery of goods will be under full responsibility of the ministry of defense. In any case, trains must be accompanied. It is necessary to establish 2-3 camps between Leselidze and Samtredia to ensure relief of the accompanying guard on permanent basis. One of the camps should be established in Leselidze. The personnel is to be chosen thoroughly. No one of them should enter towns and villages. The local militia will keep order in towns and villages and if necessary will be reinforced from the center, in some places they do not deem it necessary. If the population demands, additional militia forces will be dispatched from the center.

I would like to stress that in towns and villages as well as in the places of gatherings the troops will not be used and will not have contact with the population. The protection of the bridges, railway spans and the infrastructure, related to the railway traffic will be tighten...."(short-hand record of August 10, 1992).

The State Council announced the state of emergency by its decree of August 10, 1992, that was to be implemented by the troops of the Ministry of Defense and Ministry of Interior along with the forces of the Railway Department of the Republic. The State Council demanded from the heads of these bodies not to allow the dislocation of the military forces and equipment into the towns and villages.

It is quite clear, that the Georgian authorities did not intend to carry out military action against the Abkhazian Autonomous Republic. The assertions of the separatist leadership and their supporters about the "aggression and occupation" are soundless and rooted into falsification of facts.

It should be noted, that the minister of defense of Georgia at that time Mr. Tengiz Kitovani was instructed to co-ordinate the plan of dislocation and actions of the troops with the leadership of the Abkhazian Autonomous Republic as the latter was informed beforehand on the relocation. As it appeared, Mr. T. Kitovani did not follow the instructions and thus offered ground to the separatists for provocation and pursuing their aggressive aims.

On August 14, 1992 Abkhaz separatists opened fire on the Georgians armed forces, killing and wounding their personnel. The General Prosecutor's Office possesses in its investigation files incontestable videotaped evidences of this fact.

**IV.5 Systematic and widespread nature of the acts**

"The Georgians can live here no longer in Abkhazia they can only die".

Accomplishing the objectives of this fascist ideology was considered possible by the separatists leaders if they would resort to the systematic and mass annihilation of the Georgian population of Abkhazia with the rest to be expelled from the region as a result of bloody terror and forcible deportation.

"The issue (starting the conflict) whatever paradoxical it may seem is ethnically motivated. This is issue by which the heads of the Gudauta extremists are being preoccupied - ethnic cleansing of their own region. We are not speaking only about deportation and forcible removal but as well as extermination of Georgians, which constitute by virtue of objective circumstances majority of the population" ( See above, M. Demianov, par. IV, 4).

This policy has been conducted in Abkhazia in stages Gudauta zone - from 14 August to 2 October 1992, Gagra zone - 2 October 1992 to 15 September 1993, Sokhumi, Ochamchire, Gali and Tkvarcheli zones - from 16 September to the present day.

As a result , about 10000 peaceful population have been killed and over 200000 Georgians have been forced to free from their birthplaces. What attracts the attention is nearly the same design of the acts perpetrated in different areas under the separatists control.

Before wiping out the areas populated by Georgians the separatists took off to the zone the Abkhaz population. Gudauta district was designated as an area where the Abkhaz should gather to give to the separatists the possibility of conducting policy of total annihilation of the Georgian population in the territory of Abkhazia. Remarkably, when the government troops surrounding the town Tkvarcheli let in the town the humanitarian relief the Abkhaz leaders used this opportunity for taking out only Abkhaz population by the Russian helicopters excluding all others.

Only after the strong protest of the Georgian government the places though very few were allocated in the helicopters to the Georgians and others.

The extermination of the Georgian population was carried out even in the areas never affected with military actions. This was the case in the Gali Region with 80 000 Georgian population, where more than 1000 peaceful civilians have been killed, tortured, burnt alive and the rest expelled. Tens of elder people, children and women died being not able to stand all hurdles of fleeing through mountainous pass. The refugees and displaced persons still are not allowed to return to their homes as those who dared to return at their own risk to the Gali Region are persecuted and often to death. This is the way, how the slogan "the Georgians can live here no longer, in Abkhazia they can only die" was and is still translated into the reality. The author of the slogan- a former commander of one of the illegal formations Mr. V. Smir, currently holds the post of the Deputy Minister of Interior of the self-styled republic of Abkhazia.

As witnessed by Lali Maskharashvili , a nurse at the Gagra hospital " The separatists brought the corpse of the Georgian girl to the hospital. She was sawed in half. The letter in Russian said: "it is impossible to put this girl back together again, thus , it is impossible to put Georgia and Abkhazia back together again."

The separatists kept Shota Mgeladze naked , standing in water up to his knees for the whole night. Then one of the boeviks cut his left hand with knife, filled a glass with blood and demanded that he drink his own blood. When S. Mgeladze refused, the boevik apologized cynically with the words: "You should not be too hard on me. I'll drink not only your blood, but every Georgian's blood". Then he drank the blood and threatened that if Georgian did not leave the territory of Abkhazia, they would all be exterminated.

The systematic and mass destruction of the Georgian population was the main objective of the armed conflict and not its by-side effect.

**IV.6 Extermination of the Georgian leadership of the Abkhazian Autonomous Republic and leading servants in the sphere of education, health care and culture**

Shortly after the fall of Sokhumi, 27 September 1993, Jiuli Shartava, Chairman of the Council of Ministers of the Autonomous Republic of Abkhazia, was tortured mercilessly and shot dead. The same fate was shared by most members of his government, including the mayor of the capital - G. Gabeskiria, the chief of the local Abkhazian police - Rapava, the deputy of the head of the Gagra Municipality - M.Gincharadze, and other key officials and staff members.

The separatists massacred more than one hundred artists, among them many women, who were tortured to death, including Nato Milorava (37 year old), the art manager of the Gumista cultural center, the drama artists V. Ckheidze, T. Zhvania, G.Gelovani and Y.Gelovani, director of the Sokhumi central park.

The separatists have killed more than eighty physicians, mostly women. V.Kholbaya, T.Tsotoria, N. Shonia, A.Shelia, M. Beselia, I. Tkhebuchava. The following physicians were killed while exercising their professional duties. Z.Danelia, G. Sichinava, R.Ispekcthian, G.Barkalaia, Sh. Gvazava and others. In Gulripshi the chief physician of at the hospital Sh. Jgamadze and his colleague P.Shichinava were shot dead before the members of their families.

The separatists and their North Caucasus accomplices slaughtered more than 200 teachers, among them 60 women. V. Sigua, I. Gogokhia-Tchitanava, T. Dzandzava, E. Pilpani, L. Akubardia, T. Pachulia, G.Grdzelidze and others.

**IV.7 Mass executions and murder of the peaceful Georgian population accompanied by cruel treatment**

**a) mass executions**

The mass killing of the peaceful population of Georgia were accompanied by the torture of old people, women and children.

The Georgian population was massacred and those who survived were expelled en masse, first from Sokhumi and Gudauta, where the Abkhaz separatists had accumulated their illegal armed formation. In the very first days of the conflict 5000 Georgians had been expelled from Eshera, Likhni, Aradu, Akhalsopeli. The rest were subjected to different atrocities. In Akhalisopeli, 17 people were shot dead. A 70 year old man named I. Grdzelidze was stabbed repeatedly and had his heart cut out from his chest, in public; A. Maisuradze was cut to pieces with an ax; 65 year old N. Kvabzianidze was hitched up to a tractor and tortured to death.

After the fall of Gagra the separatists bands undertook mass killings, plundering and torture of the population of the city.

According to the statements of eyewitnesses, on October 5 in Daba Leselidze 50 peaceful Georgians were tortured and hanged on lane posts. The separatists tortured with particular severity the population of Gagra, Salkhino, Gantiadi, Lidzava, Alakhadze and Bzipi.

According to N.Chaladze's statement, after the occupation of Gagra, Abkhazian TV declared that Abkhazians and their mercenaries would receive as compensation the houses of those Georgians that they had murdered.

T. Jincharadze stated, that together with other Georgians on October 7, 1992 he was forced to gather 250 corpses of Georgians in Gagra streets, they were "loaded" on four "Kamaz" vehicles, and then thrown into a big pit. As witnessed by K. Sichinava, after the fall of the town, its Georgian population was murdered on a massive scale. At the village of Dzveli Kindgi the mercenaries shot 72 Georgian inhabitants whereas in the Gulripshi region, in the village of Ganakhleba, Abkhaz boeviks executed 48 Georgians.

As stated by the resident of Sokhumi L.Zoidze, the group of Abkhaz separatists exterminated the whole family of Pkhakadze, cut their heads off, stuck them on stakes and burnt them to a crisp.

According to L. Makharashvili : "The separatists brought the corpse of a Georgian girl to the hospital. She was sawed in half. The letter in Russian said: "As it is impossible to put this girl back together again, thus, it is impossible to put Georgia and Abkhazia back together".

As witnessed by G. Arzumanian in the village of Akhaldaba the Abkhaz separatists cut off the heads of the peaceful population. About 60 Georgian women were necklaced with tires and burnt alive. They shot mercilessly every child and young man. Those who survived were driven to the stadium and shot dead one by one. As a result, in the village of Akhaldaba about 400 people were killed altogether, in a single day.

On the 10th of March, 1995, the boeviks of Abkhaz and other nationalities, operating under the orders of the Sokhumi Authorities, penetrated into the villages of Gumurishi, Zemo and Kvemo Bargebi, Otobaia and others. They plundered Georgian families, and shot dead all of those who resisted them.

According to G. Badzagua's statement on March 12, 1995, the armed groups stormed into the Nabakevi village, detained his brother Jumber and their neighbors M. Kvaratskhelia, D. Narmania, G.kharchilava and R. Cherkezia. They took these villagers to a plantation, where Kharchilava and Cherkezia were murdered. The rest of them were brought to Kvemo Bargebi and there they too were slaughtered.

The separatists murdered more than 400 people in Sokhumi Park of Culture and rest. The separatists bombarded the airport of Sokhumi, where thousands of Georgians, Russians and citizens of other nationalities were waiting for aircraft every day. The separatists shot down several civilian aircraft. A number of people fell victim to that brutal assault, among them more than 50 women and children.

After the invasion of Sokhumi, separatists martyred 100 of Georgians - elderly people, invalids, women and children.

**b) murders carried out with particular cruelty (torture, burning alive)**

As a rule, the mass murders of the Georgian peaceful population were preceded by the torture and cynicism.

According to S. Dgebuadze: in Kindgi and Tamish, the Abkhazian separatists killed scores of Georgians, cut the corpses into pieces, hanged them on the lamp posts and inscribed: "Georgian "meet" for sale"

According to O. Gobejishvili: On the second day after the invasion of Gagra the mass exterminations of the people began. The separatists did not spare even pregnant women. The boeviks cut the women's bellies open and then trampled on the embryos.

The separatists tortured with particular severity the population of Gagra, Salkhino, Gantiadi, Bichvinta, Lidzava, Alakhadze and Bzipi. They murdered without distinction old people, women and helpless children. Among those martyred were: I. Kometiani, D. Kuchukhidze, N. Charkviani, S. Bobokhidze and S. Gvazava. The separatists ruthlessly slaughtered: O. Bzhalava - before his children and wife; B. Kutsia - before his wife's eyes; V. Benidze - before hid daughter's eyes and G. Glonti. The separatists caught a teacher, V. Samkharadze, aged 65, cut his head off and threw his body into the street. They did not permit the members of his family to bury the deceased. The corpse was torn to pieces by dogs and pigs. The separatists also cut off G. Pipia's ears and nose and then killed him.

From T. Barkalaia's statement: The Abkhaz killed his cousin T. Kvelidze, resident of Lidzava, before his eyes. First they cut off his nose, then ears and one leg, and then shot him. In the same way they killed 70 year old A. Simonishvili. The separatists kept S. Mgeladze naked, standing in water up to his knees for the whole night. Then one of the boeviks cut his left hand with a knife, filled a glass with blood and demanded that he drink his own blood. When S. Mgeladze refused, the boevik apologized cynically, that he drink not only his blood, but every Georgian's blood. Then he drank the blood, and threatened that if Georgians did not leave the territory of Abkhazia, they would all be exterminated.

The statement of Eter Berulava reads as follows: "A. Davitaia, who lived at 22 Komkavshiri Street, was tortured and killed, but prior to that, the separatists burnt his house down. O. Beria and 5 members of his family were killed with unusual barbarity, M. Gakharia, A. Kvaratskhelia, V. Kalandia and many others were martyred as well.

According to the statement of Roza Gabedava, on September 27, 1993, after the invasion of Sokhumi, Abkhaz separatists and mercenaries from other nations attacked them. Her husband Murman Todua and her son Zurab, together with their neighbors and Georgian policemen, were hiding in one of the nearby buildings. The boeviks found them and shot them dead. Roza Gabedava had to dig the grave herself and buried her family there, along with other victims.

Next to school No. 12, in front of the beer bar, drunken Abkhaz and other boeviks played a game with the decapitated heads of slaughtered Georgians, kicking the heads back and forth and shouted with laughter.

Two additional residents of Sokhumi, R. Shubladze and G. Kvashilava were executed with machine guns. Later, the separatists cut off flesh from their legs and arms and threw it

on the floor. When R. Shobladze's horrified wife asked them why they had committed such an atrocity, they replied that the same fate would be suffered by all Georgians who would dare to stay in Abkhazia.

The Abkhaz separatists and their boeviks have repeatedly launched assaults against the villages of the Gali region. In the village Okumi 65 persons were killed savagely; out of which 20 were women. Among those murdered were Venera Antia, age 90. Neli Gargaia, age 55. Vara Gunia, age 81, Alma Latsuzbaia, age 67, Natela Shelia, age 56.

In the city of Gali 128 people were tortured to death, out of which 20 were women.

In the village Achigvara 70 people were shot, out of which were 17 women. In Gudava 55 people were martyred , out of which 14 were women.

The same tragedy took place in Mziuri, Kvemo and Zemo Bargebi, Repi-Shesheleti, Otobaia, Nabakevi and other villages. The Abkhaz separatists burnt alive the helpless women - Z. Tsurtsumia, V. Chargazia, C. Chaava, S. Djologua, K. Gangia, T. Kvachabia, R. Zamtaria, V. Tarbaia and other.

### IV. 8. Mass rape, including of children

The family of the Director of the Gagra Health Resort - A. Baramia was attacked by the Abkhaz separatists. They raped his wife and his daughter Tsitsia. Then they tortured and shot dead A. Baramia and all of his Guests.

According to the statement of N. Bagashvili ( Ochamchire region), the Abkhaz separatists invaded their village, captured the majority of the population there - primarily women and children. They raped in public 25 girls aged 12-16. This mass sexual violence against helpless children continued for a full week. After raped the girls, the separatists cut off their nipples. According to the statement of V. Gurchiani the Abkhaz separatists systematically raped women and children in the village Varcha ( Gulripshi region). In the village Akhaldaba (Ochamchire region ) the separatists raped R. Chakvetadzes's wife and two daughters and R. Sanaia's 13 year aged girl, after that they killed all members of her family. By I. Pruidze's statement, the boeviks raped L. Goletiani, M Kurashvili, Zh. Kukhalashvili's 11 year aged daughter and burnt them.

According to G. Arzumanian's statement, the Abkhaz boeviks after invading the Akhaldaba village, raped women and nearly every child above 6. In the Ochamchire region the separatists committed mass sexual violence of the sisters Poletaev and shot them that.

According to the statement of eyewitness B. Gulua, the Abkhaz boeviks raped Gogua in the village Kochara and killed them.

### IV.9 Forcible deportation of the Georgian population

After signing an agreement on July 27, 1993, the Abkhaz separatists and their mercenaries increased the physical and psychological pressure on the peaceful Georgian population. In Bzipi they took passports away from Georgians citizens and struck their names off the list of tenants

without permission. The inhabitants, threatened by mortal danger, were forced to sign the demand, confirming that they were leaving their houses voluntarily.

On August 9, 1993 the separatists took Georgians to Adler airport, under threat of extermination, where they were forced to sign documents, compelling to leave their homes. 250 families, I. e. 3000 persons, were deported in this way, from Bzipi alone. Residents of Bzipi, K. Kikviladze and his 12 year old daughter were shot just for refusing to leave their home. The separatists shot others for the same reason.

Numerous facts of forcible deportation of the civil population were observed in the village Gantiadi, Leselidze and in the other populated areas. By the statement of D. Omanidze her and some other Georgian families in Pitsunda were forced to sign documents, compelling to leave their homes and were deported from Abkhazia. Their property was expropriated.

The same facts are confirmed by the evidence of the peaceful residents of Gulripshi region N. Nikoladze, A. Kakachia, T. Gulua and others.

It is established, that 17000 Georgian residents in Gagra left their native lands and became exiles for the reason of killings, threat and forcible deportation.

**IV.10 Attacks directed against hospitals, medical personnel and areas under the protection of the Red Cross and Red Crescent symbols**

The Abkhaz separatists and their mercenaries have killed more than 80 physicians, mostly women. V. Kholbaia, S. Tsitsoria, Ch. Shelia, O. Tkebuchava , M. Beselia and others. The following physicians were killed while exercising their professional duties: Z. Danelia, G. Sichinava, G. Barkalaia, Sh. Gvazava, and others. In Gulripshi the chief physician of the hospital Sh. Jgamadze and his colleague P. Sichinava - the physician of the republican hospital were shot dead before the members of their families.

The investigation established the facts of bombing and bombardment of the hospitals by the separatists located in Sokhumi, that involved destruction and human casualties. Nevertheless, the areas under the protection of the Red Cross and Red Crescent symbols were subjected to the bombardment.

**IV.11 Destruction of cultural monuments and religious objects, indispensable to the identity of the Georgian population**

As evidenced by Kharaishvili - the separatists tortured and exterminated the Georgians in Gagra, they extorted their property. The separatists shouted, that in the Gagra-Leselidze zone every Georgian would be killed, and Georgian books, monuments and houses would be burnt. In the same way the Abkhaz separatists and their mercenaries burnt down the monuments, books and schools.

In Sokhumi the separatists burnt down the monuments of Sh. Rustaveli and A. Tsereteli, cinemas: "Apsni", "Komkavshireli", "Rustaveli", "Sokhumi", Music schools N3, N4. The State Museum of Abkhazia was partially destroyed and the Papaskiri Republican Library was entirely

burnt down, the graves of the Georgian poets and writers were defiled; In Sokhumi region the separatists destroyed the palace of culture and regional library In Gulripshi region - the palace of culture and the houses of the Georgian writers, music schools and the temple, repaired by the Georgians; In the Ochamchire region - the cinema, regional library, the palace of the culture, the temple of Mokvi and partially the church of Ilori; In Gali region - the palace of culture, cinema, ethnographic museum, museum of academic I. Vekua in the village Shesheleti and the Museum of Regional Studies, In Gagra region - the monuments of K. Gamsakhurdia and the Hero of the Soviet Union G. Kilasonia, the friendship museum in Bichvinta; In the village Likhni, Gudauta region - church built by the Georgians in the 12th century, with the inscription on the Georgian language

The separatists killed more than 100 worker in field of Art including women. They also killed the artistic leader of the Gumista theater V. Chkheidze, T. Zhvania, F. Gelovani, the director of the Sokhumi Park of Culture and Rest I. Davitaia and others.

**IV.12 Deliberate inflicting on the Georgian population conditions of life aimed at bringing about its physical destruction in whole or in part**

The Abkhaz separatists deliberately create conditions with the view of the total extermination of the remained peaceful Georgian population in Abkhazia and obstructing the refugees and displaced persons return to their homes. Noteworthy, that such criminal acts are committed by the separatists even after the deploying Russian peacekeeping forces in the conflict zone. On the October 17, 1994, in Gali region the Abkhaz separatists and their mercenaries shot dead the peaceful residents Terenti and Emzar Lemonjava and burned their bodies. In March, 1995 G. Kharchilava, R. Cherkezia, V. Injia, G. Lezhava, I. Tsikolia, were killed. The systematic robberies and attacks toward the peaceful Georgian population are committed.

It is established , that in the beginning of the conflict the Abkhaz separatists totally blockaded the villages of Gudauta region populated mainly by the Georgians and deprived them of any means of earning their living and making them incommunicado vis-a-vis the outside world.

**IV. 13 Total destruction of towns and villages by means of bombing, burning to ashes houses and buildings with their inhabitants**

The separatists destroyed and burnt to the ground thousands of Georgian houses, to deprive them of the opportunity or desire to return to their homes. The policy of ethnic cleansing-genocide of unthinkable magnitude was carried out against the Georgian population, in particular in the Gali region ,where 97 percent of more than 80 thousand residents of the region were Georgians. On September 29,1993, the separatists and their occupants invaded Gali region and started the mass extermination of the peaceful population.

Since February 1994, the Abkhaz separatists have repeatedly launched assaults against the villages of the Gali region, plundering, killing and terrorizing the population. They destroyed and razed to the ground hundreds of villages. They burnt and ruined 6800 buildings, 40 schools, 35 units of domestic and economic purpose, stole more than 25 thousand cattle, plundered the

factories, captured expensive, foreign equipment, causing irreparable damage to the economy of the region. In the village of Okumi, from 710 buildings of the peaceful Georgian population 610 were ruined, 65 persons were killed savagely, out of which 20 were women of old age. In the village Achigvara, 411 houses were burnt and destroyed. 70 people were shot, out of which 17 were women. In Gudava, 429 houses were burnt down. 55 people were martyred, out of which 14 were women.

Elderly helpless women were burnt alive in their houses: Zh. Tsurtsumia, V. Chargazia, Ch. Chaava, Sh. Jologua, G. Gangia, L. Kvachakhia, R. Zantaria, B. Malishava, V. Tarbaia and others.

In Sokhumi A. Davitaia was burnt in his house. O. Beria was suffered by the same fate with his five members of the family.

For several months the separatists bombarded Sokhumi and Ochamchire, with ten of thousands of bombs. In the city of Sokhumi 400 citizens perished through such bombing. The separatists bombarded, as a rule at night, when the town was asleep.

**IV.14 Depriving the refugees and forcibly displaced persons of the right to return to their places of residence and terror towards those who have dared to return**

By implementing ethnic cleansing/genocide, the separatists have effectively reduced the Georgian population to zero. They did and continue to do everything in order not to allow the return of the displaced persons to their native lands throughout whole territory of Abkhazia including the Gali region , where in accordance with the Quadripartite Agreement, signed on April 4, 1994 by the Georgian , Russian, UNHCR and Abkhaz separatists' parties and other agreement, the displaced persons should return first.

Consequently, the number 311 i.e number of displaced persons allowed to their homes, heralds the reign of cinisim. With such speed, the return of the refugees only into Gali region would last more then 200 year, as in the whole territory of Abkhazia - 800 years respectively.

The UN Security Council in its resolutions on the conflicts in Abkhazia demands the return of refugees and displaced persons without delay or preconditions (see the draft resolution 1065 (1996), 1096 (1997)). This practice of obstruction was condemned at the Lisbon Summit (Declaration, par 20). The Council of the Heads of CIS States repeatedly condemned the impeding of return of the displaced persons in the Gali region.

However, the separatists ignoring the demands of international community, continue to carry out the policy of deliberate extermination and terror in relation of those, who dared to return to Abkhazia at their own risk.

" The Abkhaz authorities are continuing to implement a policy of violent ethnic cleansing designed to prevent significant repatriation to Gali District and elsewhere in Abkhazia. Tactics used range from simple verbal intimidation and short-term arbitrary arrest and murder. Some of the atrocities were committed under the order from Sokhumi..." (Source- OSCE Mission to Georgia and UN personnel in Tbilisi, "Report on Survey of Human Rights Conditions in Gali

District, Republic of Georgia " on the visit to Western Georgia and Gali District controlled by the Abkhaz, from 19 - 21 April, 1995).

Remarkably, after the CIS Peacekeeping Forces, recruited by the Russian armed forces brought into the conflict zone, more than 1300 peaceful residents, especially elder people, women, children, were killed in Gali region and more than 6000 houses burnt down.

But nothing could prevent the desperate people, they return to their homes at their risk. More than 30000 persons have already returned, some of them are becoming the victims of terror and often roam to place to place to escape the punitive operations, conducted as reprisals for the so-called terrorist acts of partisans.

The Hitlerian thugs acted in the same way.

The fact remains, that the separatists use all means not to allow the demographic composition of Abkhazia to return to *status quo ante* despite of the UN Security Council's affirming the unacceptability of the forcible demographic changes(Resolution 1065(1996), 1096 (1997).

**V. Conclusions and recommendations**

V.1. The facts, established during the investigation of the events that took place before the beginning of the armed conflict(August 14 1992), launched against the democratic government of Georgia by the Abkhaz separatists as well as during the military actions(August 1992-September 1993) and then after the cease-fire and the assumption of control by the illegal military formations, including thousands of mercenaries, over the whole territory of Abkhazia, witness:

V.2. The separatists have been continuing their policy of "ethnic cleansing" manifested in the form of genocide against the Georgians, that constituted 45, 76% I. e 244 872 persons of the population of Abkhazia.

V.3. The preparations for these crimes have continued for years as the official and non-official mass media of Abkhazia along with political figures and scholars imbued the youth with the hatred towards "Georgian occupants" and blessed the day when there would be no Georgian in Abkhazia.

V.4. Having acknowledged, that for the minority group(Abkazs amounted to 94767 persons I. e 17, 73%)of the multiethnic population of Abkhazia there would be no "democratic" way for securing the break out of the region from the rest of Georgia, the separatists from the very beginning of the conflict embarked upon the exterminating the Georgian population.

The premeditated genocide of the peaceful Georgian population was set to implementation with active assistance of the instigators and accomplices, including thousands of mercenaries from Russia, twice in numbers than the Abkhaz formations themselves. It was manifested in mass extermination of people, tortures, burning, hanging, rape, systematic bombing of populated areas, destruction of hospitals, towns and villages. Ancient monuments of the Georgian culture showing that Abkhazia has always been a historical part of Georgia are destroyed. These are incomplete list of acts, widely used against the Georgian population of Abkhazia.

Thus, the fascist slogan and purposeful policy - "Abkhazia without Georgians" has become the gloomy reality.

V.5. However, this policy still continues as more than 200 000 Georgian refugees and displaced persons are not allowed back into their homes. Those, who dare to return voluntarily are being savagely persecuted.

V.6. The international community of states(UN, OSCE, CIS, European Parliament) condemning the policy of "ethnic cleansing", being manifested in mass extermination and forcible expulsion of predominantly Georgian population of Abkhazia affirmed the unacceptability of refusing them to return to Abkhazia and to forcibly changing the demographic composition of Abkhazia, Georgia.

V.7. The Georgian State Prosecutor's Office has concluded its inquiry into the crimes committed in Abkhazia, categorizing them as grave breaches of international humanitarian law and crimes perpetrated against humanity, *inter alia* as genocide. These crimes fall under jurisdiction of international court.

V.8. The territory of Abkhazia, where these crimes were committed, however, is still under the control of separatists and therefore the Georgian State Prosecutor's Office is not in a position to undertake all necessary measures, prescribed by law with a view of detaining and bringing those guilty in committing these crimes before justice.

V.9. The international community is incumbent to render assistance to the competent authorities of Georgia to submit those guilty in the crimes against humanity in the most heinous form of ethnic cleansing - genocide to justice.

V.10. It is necessary, that competent UN organs to assign mission of experts to Georgia for the assessment of the accusations.

V.11. Confirming the facts of ethnic cleansing-genocide against the Georgian population of Abkhazia on the international level should lead to instituting process by the UN with a view to bringing those guilty in these crimes before justice in accordance with international principles of due process.

**Annexes 1-3 see below**

## Dynamics of the Demographic Situation in Abkhazia, Georgia, 1992-1997

According to the data, the population of the Autonomous Republic of Abkhazia for January 1, 1992 was 535061 as by the same period of 1997 amounted to - 145986. Thus, the population of Abkhazia decreased by 388075, i. e. 72.7 %, or 3.67 times.

Noteworthy, the reduction while being manifested in all ethnic groups, affected predominantly the Georgian population of Abkhazia.

If for January 1, 1992 the number of ethnic groups was 244872, i. e. 45,76% of the whole population, for the same period of 1997 it was 43442, i. e. 29.76% of the current population. This percentage is very impressive from the first sight, but taking into consideration the reduction of the total population of Abkhazia, the real amount of ethnic Georgians reduced to 201430, i. e. 82.2% or 5.64 times.

It is important to note the situation in Gali District, where the overwhelming majority of the population are ethnic Georgians. The number of the population is not stable and display the tendency of reduction, i.e. due to the punitive operations are carried out by the separatist regime on permanent basis.

For January 1, 1992 the Abkhazians constituted 17.73% of the whole population. For the corresponding period of 1997 their number was reduced to 53993, i. e. 36,98% of the current total population.

Notwithstanding the fact, that the percentage of Abkhazians as compared with the previous period was doubled, their number reduced to 40774. If the reduction of the Georgian population is caused by the ethnic cleansing and forcible deportation, the reduction of the Abkhazian population is the result of migration processes flowing out from the current economic and political chaos in Abkhazia, unbearable living conditions and criminal situation. It must be taken into consideration that the overwhelming majority of Abkhazians left the territory from the beginning of the conflict as they did not want to participate in the war and bloodshed. Currently they are not returning to their native lands because of the fear of persecution from the separatists.

The same concerns the Russians, Armenians and other ethnic groups.

At present, the mass migration of the population on the bases of forcible drafting of youth to the so-called Abkhazian army would obviously further decrease the population of Abkhazia as a whole.

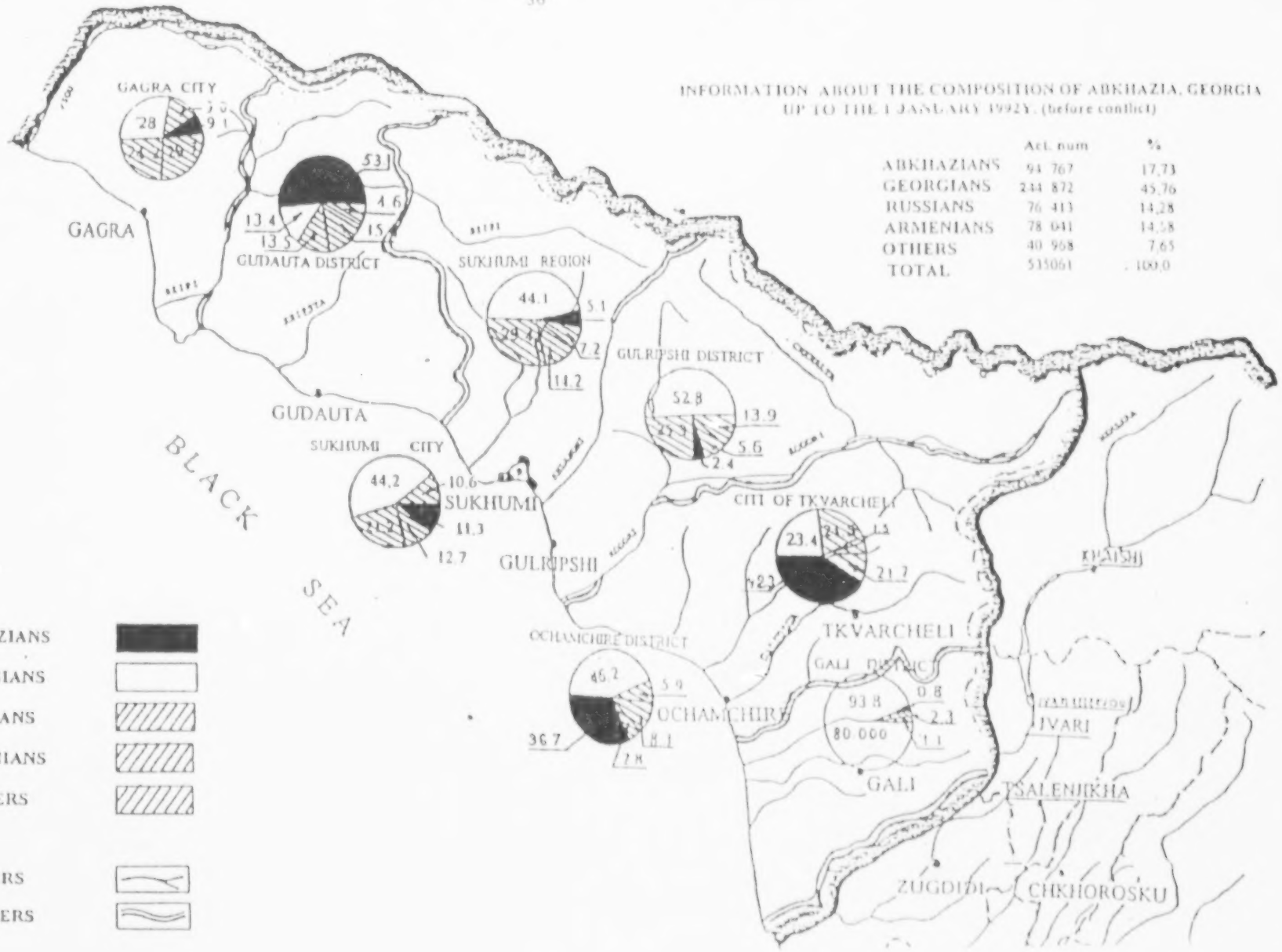
The map shows the clear changes of the demographic situation in all regions of Abkhazia.

The Gulripshi region is worth of noting, where the percentage index of ethnic Georgians is comparatively increased at the expense of unoccupied mountainous Kodori valley.

As concerns the Tkvarcheli region, the number of population was reduced from 5086 to 177 Georgians constituting only 15.04%.

From the all above said the relevant changes of the demographic situation in Abkhazia are clearly observed, that is conditioned by the systematic genocide and ethnic cleansing carried out by the Ardzinba regime in the occupied territories and still continue being directed primarily against the Georgian population.

February 1997

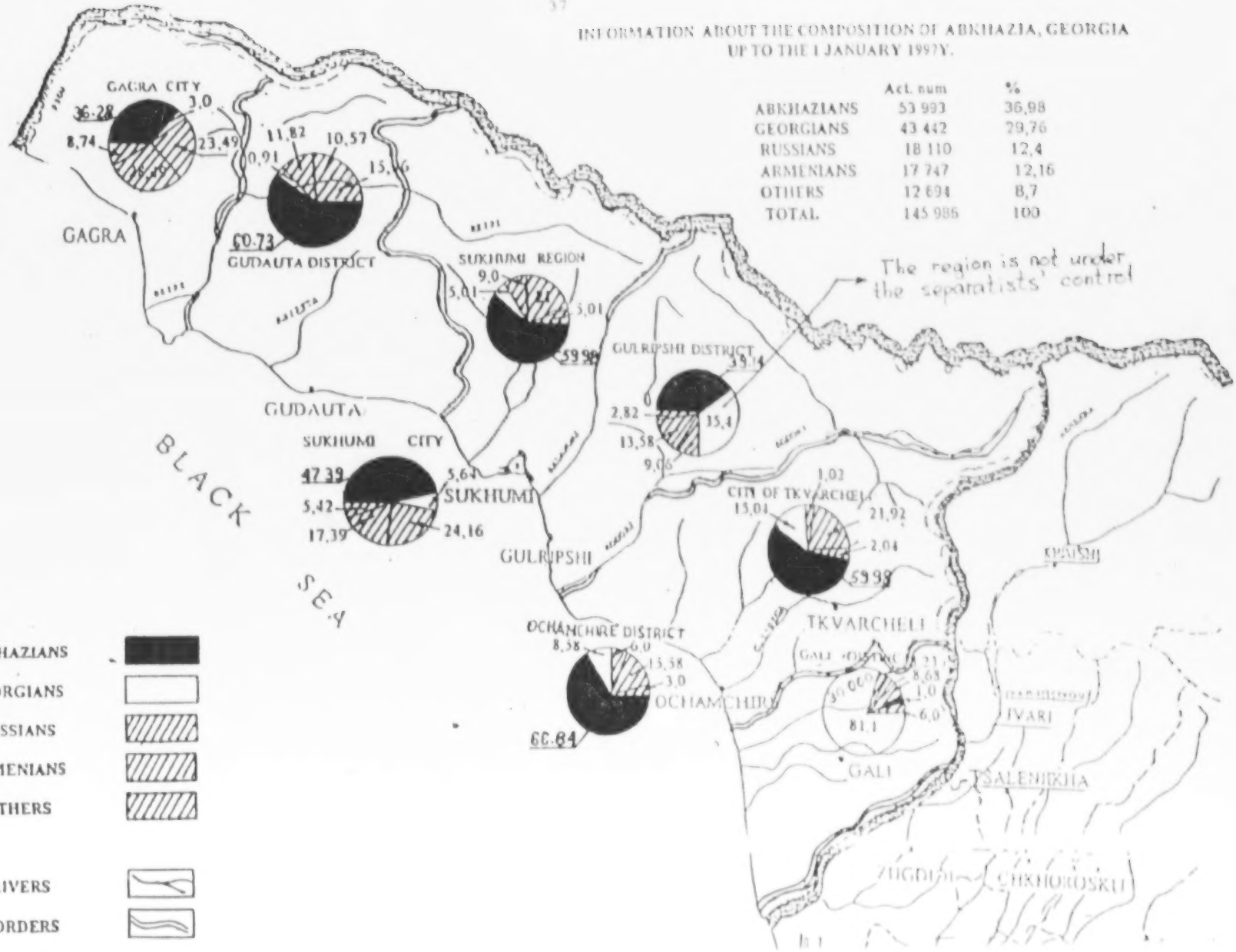



INFORMATION ABOUT THE COMPOSITION OF ABKHAZIA, GEORGIA
UP TO THE 1 JANUARY 1992Y. (before conflict)

| | Act. num | % |
|---|---|---|
| ABKHAZIANS | 94 767 | 17,73 |
| GEORGIANS | 244 872 | 45,76 |
| RUSSIANS | 76 413 | 14,28 |
| ARMENIANS | 78 041 | 14,58 |
| OTHERS | 40 968 | 7,65 |
| TOTAL | 535061 | 100.0 |

INFORMATION ABOUT THE COMPOSITION OF ABKHAZIA, GEORGIA
UP TO THE 1 JANUARY 1997Y.

| | Act. num | % |
|---|---|---|
| ABKHAZIANS | 53 993 | 36,98 |
| GEORGIANS | 43 442 | 29,76 |
| RUSSIANS | 18 110 | 12,4 |
| ARMENIANS | 17 747 | 12,16 |
| OTHERS | 12 694 | 8,7 |
| TOTAL | 145 986 | 100 |



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Agenda item 8 (c)

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

Letter dated 27 March 1997 from the Permanent Mission of the Federal Republic of Yugoslavia addressed to the Chairman of the Commission on Human Rights

I have the honour to transmit, enclosed herewith, the comments of the Government of the Federal Republic of Yugoslavia on the report submitted by Mr. Manfred Nowak, expert of the Commission on Human Rights in charge of the special process dealing with missing persons in the territory of the former Yugoslavia, pursuant to paragraph 38 of Commission resolution 1996/71 (E/CN.4/1997/55, of 15 January 1997), along with a Memorandum on Missing Persons of the Federal Republic of Yugoslavia, and to request you kindly to distribute the comments together with the Memorandum* as an official document of the Commission, under agenda item 8 (c).

(Signed) Miroslav Milosevic
Chargé d'affaires a.i.

* The annex is reproduced as received in the language of submission only.

ANNEX

COMMENTS

OF THE GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA ON THE REPORT SUBMITTED BY MR. MANFRED NOWAK, EXPERT OF THE COMMISSION OF HUMAN RIGHTS IN CHARGE OF SPECIAL PROCESS DEALING WITH MISSING PERSONS IN THE TERRITORY OF THE FORMER YUGOSLAVIA, PURSUANT TO PARAGRAPH 4 OF THE COMMISSION RESOLUTION 1996/71 (E/CN.4/1997/55)

In an effort to clear up some parts of the report submitted by Mr. Manfred Nowak, Expert Member of the Commission of Human Rights in charge of Special process dealing with missing persons in the territory of the former Yugoslavia, enclosed herewith is a copy of the Memorandum on Missing Persons of the Federal Republic of Yugoslavia, which was submitted to Mr. Syrus Vance, Chairman of the International Commission for Missing Persons (ICMP) on February 14, 1997, by the Chairman of the Commission of the Government of the Federal Republic of Yugoslavia for Humanitarian Issues and Missing Persons, Professor Pavle Todorovic.

It is evident from the Memorandum that the Federal Republic of Yugoslavia has been actively participating in the process of resolving the issues of imprisoned, arrested, killed and missing persons in the territory of the former Yugoslavia since 1991, thus making the remarks made by Mr. Nowak (paras 6, 113 and 15) unreliable (detailed information to be found on pages 1 and 2 of the Memorandum).

The Memorandum also gives information on the demands of the Federal Commission on the Government of the Federal Republic of Yugoslavia made to the Government of Croatia concerning Serbs disappeared, missing or imprisoned in Croatian prisons to this day (pages 3 - 8).

Efforts to solve these issues have been made with active participation of the Federal Republic of Yugoslavia ever since 1991, in cooperation with the International Committee of the Red Cross and within bilateral commissions of the governments involved; currently, the International Commission for Missing Persons is also instrumental in the effort to accelerate this continuous process.

Paragraph 81 of the Report contains severe accusations when stating that "Several thousand persons of Serb origin who were fleeing through the highway to Belgrade were allegedly killed by the Croatian Army in Spacva Forest. Owing to the large size of the Spacva Forest, the exact site of the mass grave where they were buried is not known, but it could be between the village of Bosnjaci (near Zupanja) and the village of Lipovac. According to the reports, during operation "Storm", the Croatian army conducted another mass killing on the road between Glina and Bosanski Novi, near the villages of Gornji and Donji Zirovac, where mass grave sites have allegedly been located." The gravity of these charges calls for an immediate demand to be submitted to the Croatian side, for a detailed information to be submitted to the ICMP, thus making it possible for the ICMP to proceed further with its deliberations on the above tragic events.

However, Mr. Nowak remains silent, even though the international practice prevailing in such cases calls for the international expert to propose concrete action against Croatia, which is responsible for such brutal violation of human rights of Serbs.

The figures given in the Report paras 83, 84 and 85 are inaccurate. The exact figures can be found in the Memorandum, as well as in the statement given by professor Pavle Todorovic on March 21, 1997, at the Third ICMP Meeting, held in Zagreb, whereby 1112 death certificates, along with 552 detailed post mortem protocols, have been transmitted to Croatia to this date.

In paras 18, 74 and 112 l.a., Mr. Nowak refers to figures and alleged responsibility of the Federal Republic of Yugoslavia which are not to be found in any other relevant official sources, nor have they been on the agenda of the bilateral commission meetings. Furthermore, the Federal Republic of Yugoslavia has never "officially accepted responsibility for the cases of missing persons which occurred during armed conflict in 1991", nor was the Croatian Army established at that time (para 13).

In our opinion, the above-mentioned and other examples are of no help to the Special process or to the establishment of the needed confidence between the parties involved.

February 1997

# MEMORANDUM
## on missing persons of the FR of Yugoslavia

On the basis of the letter of Mr. Cyrus Vance, Chairman of the International Commission for Missing Persons (ICMP) addressed to the Federal Minister for Foreign Affairs, Mr. Milan Milutinové, the Federal Ministry for Foreign Affairs and the Commission of the Government of the FR of Yugoslavia for Humanitarian Questions and Missing Persons, have prepared a reply in the form of a Memorandum.

This Memorandum highlights the past activities of the FR of Yugoslavia i.e. its competent authorities in resolving the question of imprisoned, arrested, killed and missing persons in the territory of the former Yugoslavia, as a result of the war conflicts. It also emphasized the accompanying problems and difficulties which are still making it difficult to resolve the question of missing persons as soon as possible.

1. Immediately after the outbreak of armed conflicts in the Republic of Slovenia, and later in the Republic of Croatia and after the first arrests of the members of the former JNA, the Government of the FR of Yugoslavia has undertaken all measures with a view to finding all missing persons on the basis of its humanitarian orientation, the Constitution of the FR of Yugoslavia as well as the rules of the international law.

With small initial difficulties, all imprisoned and killed persons in the Republic of Slovenia were registered and after that, they were released or their mortal remains were turned over.

However, the resolution of these issues with the Republic of Croatia was ever since the beginning fraught with difficulties, still partially in evidence in the present period.

At the initiative of the FR of Yugoslavia and the International Committee of the Red Cross, a meeting was held in Geneva on 27 November 1991 between the representatives (authorized persons) from the SFRY and the Republic of Croatia, whereupon a Memorandum of Understanding was adopted. A way was agreed in the Memorandum to resolve humanitarian problems and implement the rules of humanitarian law. Inter alia, it envisaged the establishment of a Joint Commission for the search of missing persons and mortal remains. The Commission was established at a meeting held on 16 December 1991 in Pecz, Hungary.

The Commission held 9 sessions in all (seven in Pecz and two in Budapest). The work of the Commission was ended by a unilateral decision of the Croatian side in August 1992 and was officially terminated at the meeting of the delegations of the FR of Yugoslavia and Republic of Croatia headed on 15 February 1994 in Zagreb. At the same time, it was agreed at the meeting that this Commission be replaced by another, also comprised by the representatives of the two Governments.

In that respect, the Federal Government made a decision on 17 November 1994 to establish a Commission of the Federal Government for Humanitarian Questions and Missing Persons whose task was to follow, study and make proposals for the resolution of humanitarian questions as well as those related to missing persons from the territory of former Yugoslavia, primarily the citizens of the FR of Yugoslavia.

Prof. Dr. Pavle Todorović, Deputy Federal Minister for Labour, Health and Social Welfare, was appointed Chairman of the Commission by the decision of the Federal Government.

The newly-appointed Commission has had ten meetings with the Commission of the Republic of Croatia for Imprisoned and Missing Persons, at which they resolved the fate 1,000 persons sought by both sides. Also, a Protocol on Cooperation was signed on 17 April 1996 in Zagreb between the Commissions of the Government of the FR of Yugoslavia for Humanitarian Questions and Missing Persons and the Commission of the Government of the Republic of Croatia for Imprisoned and Missing Persons which laid down the groundwork to mutually resolve the question of the missing persons. By the signing of the Protocol, new preconditions have been created to resolve more speedily the question of missing persons in the territory of the former Yugoslavia.

Annex 1: Protocol

In this Protocol, the Republic of Croatia committed itself to resolving, through talks and negotiations, also the question of missing persons from the Serb Krajina i.e. from the UNPAs. It is well-known that after the activities of the Croatian army ("Lightning" and "Storm") between 210,000 and 236,000 Serbs were expelled and 2,084 persons were reported missing and from the Serb Krajina (UNPA sector) 2,985 persons were reported missing.

In the circumstances, the Commission of the Government of the FR of Yugoslavia for Humanitarian Questions and Missing Persons has undertaken to resolve the question of missing persons from the FR of Yugoslavia parallel to the question of the missing Serbs from the Serb Krajina under the protection of UNPA forces.

The problems related to the missing Serbs from the Serb Krajina (UNPA Sector) are addressed in this Memorandum as a separate whole, representing its integral part. The material is enclosed herewith.

Under the Dayton Agreement, a bilateral agreement was signed in August 1996 by the FR of Yugoslavia and the Republic of Croatia, which provides for that the issue of missing persons be resolved without delay and that the available data be immediately exchanged.

The FR of Yugoslavia has fulfilled all its obligations arising from the Agreement as well as from the Protocol on Cooperation between the Commission of the Government of the Federal Republic of Yugoslavia for Humanitarian Questions and Missing Persons and the Commission of the Government of the Republic of Croatia for Imprisoned and Missing Persons

Namely, the Yugoslav side released all war prisoners originating from the Republic of Croatia as early as 14 August 1992 and on 12 January 1994 also released the members of the subversive-terrorist group, so called "Sombor Group", which infiltrated to the FR of Yugoslavia from the Republic of Croatia. Since then, there is no person in the FR of Yugoslavia with the status of a war prisoner. In that respect, the FR of Yugoslavia has made an official statement in a written form.

On the other hand, the Republic of Croatia has not fulfilled its obligations. According to available records and its own admission, even after the latest amnesty it still holds some persons in its prisons whose names

figure on the lists of missing persons from Yugoslavia and from the Serb Krajina (UNPA Sector). Three persons from the Yugoslav list have been in the Croatian prisons since 1992. For Ivica Vuletić, a Yugoslav national, no legally effective ruling was made although he is charged with alleged war crimes.

In addition, according to the statements of the persons released from Croatian prisons, the Republic of Croatia still has in its prisons a number of persons that have not been identified or visited by the International Committee of the Red Cross.

2. In fulfilling its commitments arising from the Protocol, the FR of Yugoslavia made available all lists and documents on the registered persons to the Republic of Croatia, whereas the latter failed to the same. The FR of Yugoslavia handed over to the Republic of Croatia the list of the persons killed in Vukovar in 1991:

a) a list of 770 identified persons from Vukovar killed in 1991;

b) a list of 335 unidentified persons from Vukovar killed in 1991;

c) the files on killed persons in Vukovar in 1991, available to us, sought by the Croatian side, are soon to be handed over. So far 1,012 death certificates were handed over as well as 140 files on killed identified and unidentified persons.

2a. According to the current lists of the Commission of the FR of Yugoslavia, the Republic of Croatia is asked to provide:

2a.1 Information on 956 persons. This broader list contains the names of all persons from the territory of the former Yugoslavia since the beginning of war conflicts in Slovenia (26 June 1991) regardless of nationality and religion. Data for a smaller number of persons are incomplete since those persons were registered in the beginning of the war conflicts. Subsequently some of them remained in the territory of the Republic of Croatia and Bosnia and Herzegovina and further data are unavailable.

Annex 2: List

2a. 2 On the basis of the statements of persons released from

Croatian prisons and other sources, out of 956 persons following the imprisonment and arrest, 61 persons, mostly members of the former JNA, were alive and kept in the prisons in the Republic of Croatia. In the meantime, 5 persons were released and mortal remains of one person were recovered.

The list of 55 persons believed alive includes:

a) pilots:

1. Colonel Radislav Moric, of father Antun, reported missing on 13 April 1992,

2. Captain Slobodan Medić, of father Uragan, reported missing on 2 May 1992,

3. Major Miroslav Milutinović, of father Momir, reported missing on 2 October 1991,

4. Captain Nešo Vrangelovski, of father Ramazan, reported missing on 5 September 1991, and

5. Lieutenant Valter Jurišić, of father Mario, reported missing on 19 September 1991.

Pilots Colonel Radislav Moric and Captain Slobodan Medić are reportedly imprisoned after their aircraft were downed. The statements are enclosed to their files.

b) Soldiers taken prisoner on 2 May 1992 in the vicinity of village Donje Kolibe (Bosanski Brod) were interrogated for several days by the official authorities in a prison in Slavonski Brod (Republic of Croatia), after which 4 persons were released and mortal remains of 3 were taken over. We seek information on seven persons from the Republic of Croatia.

c) Reservists from the so called "Nikšić Group". Eleven persons were taken prisoner on 14 April 1992 in Mostar. Those persons were reportedly alive and were kept in prison Lora, Split. They were subsequently taken to Duvno and Livno.

d) Three reservists from the so called "Šavnik Group" taken prisoner

on 6 May 1992 near Čepikuće were also held by the Republic of Croatia.

e) There are indications that all above persons as well as other thirty persons from the list of 55 members of the former JNA are still alive and are held in various Croatian prisons, most of them in Lepoglava, despite the Croatian claims to the contrary.

Annex 3: File for persons from the list of 55

2a. 3 It is also requested from the Croatian side to hand over the mortal remains of 96 members of the former JNA. There is evidence that these persons were killed and buried in the territory of the Republic of Croatia. The FR of Yugoslavia provided all relevant information to the Croatian side concerning the time and place relevant to their death.

Annex 4: List

2a.4. The Yugoslav side seeks information on the persons taken prisoner in 1991 in Vukovar before the outbreak of war conflicts when the authorities of the Republic of Croatia were in power in Vukovar.

Annex : List and files

2a.5 The Commission of the Government of the FR of Yugoslavia for Humanitarian Questions and Missing Persons has still not received the information and documentation for persons reported missing in 1991 from the following localities: Gospić; Zagreb, Military Hospital; Bjelovar barracks; Bjelovar-Kišova farma; military barracks in Osijek; military Barracks in Vinkovci; Military Barracks in Logorište in Karlovac; the Bridge over the Korana River, Karlovac; Paulin Dvor and Kip; Village Vaški and Maćeška Šagovina.

2b. In addition to problems related to the missing persons in the Republic of Croatia, the FR of Yugoslavia is also looking for 112 persons members of the former JNA, whose fate is still unknown.

Since the outbreak of the war conflicts in the territory of Bosnia and Herzegovina and the departure of JNA from Bosnia and Herzegovina, there were several attempts to establish contacts with the Muslim side to resolve the questions of missing persons from the list of the FR of Yugoslavia in

order to clarify the fate of the members of the former JNA who were killed in the attacks on the JNA columns in Sarajevo and Tuzla, in May 1992 and other individual cases. Due to well-known events in Bosnia and Herzegovina until 15 October 1995 there were no official contacts and talks with the Muslim side. There were same contacts and talks through the Republic of Srpska, whereupon the Muslim side released a number of the imprisoned and arrested persons. Second meeting and talks with the Muslim side was scheduled for 5 November 1996 in Belgrade, but it failed to appear. On 10 and 11 December 1996 there was a meeting in Belgrade between the members of expert groups of the Commission of the Government of the FR of Yugoslavia for Humanitarian Questions and Missing Persons, Commission of the Government of the Republic of Croatia for Imprisoned and Missing Persons, Commission of the Republic of Srpska and the Croatian part of the Commission. The representatives of the Muslim side in Bosnia and Herzegovina were also invited but again failed to appear.

We particularly appeal to you to help us resolve the question of the missing persons in the territory of Bosnia and Herzegovina whose names appear on the list of the FR of Yugoslavia.

Annex 6: List

3. Persons from the list of missing persons for whom there is information that they are in Croatian prisons.

The information that are sought concerning the knowledge that the Republic of Croatia holds a number of imprisoned persons, arrested persons from the Yugoslav list and from the list of the Centre for Collecting Documents and Information "Veritas" are already provided attached to the files of those persons and need not be repeated. However, the Republic of Croatia has denied all those allegations at all past talks, nine in all, with the Commission of the FR of Yugoslavia. We therefore ask that the statements attached to the files on imprisonment and arrests have to be carefully considered by Mr. Vance's Commission. All those information should be presented to the Croatian side and means and methods should be devised to have the Republic of Croatia honour them. From the past practice, talks and the exchange of prisoners, it is evident that the Republic of Croatia has consistently denied that some persons were on the lists only to subsequently release them. For example, Croatia has denied for more than a year that it held Major Glavaš. It was not possible to determine his fate. Suddenly, at the prisoner exchange in Čelebić, on 19 June 1993, Major Glavaš was

brought in.

There is a great problem involving missing persons in view of the fact that the Republic of Croatia provided different information to the Commission of the Government of the FR of Yugoslavia for Humanitarian Questions concerning the fate of pilots Radislav Moric and Slobodan Medic. Namely, at several talks and meetings, the Croatian authorities claimed that the two pilots were killed and the sites where they were buried were known However, the fate of the two pilots even after five years and negotiations with the Republic of Yugoslavia has not been established. The Republic of Croatia now claims that they do not have the mortal remains of Radislav Moric and Slobodan Medić. Instead they have submitted "certain papers" from which it stems that those persons are neither dead nor alive which is unacceptable for the FR of Yugoslavia.

We consider that in connection with this problem special efforts need to be undertaken to be able to resolve the question of the pilots. The Croatian side has to be aware, which is evident from the enclosed documents (witness accounts) that the authorities of the Republic of Croatia are aware of problems related to the pilots and that they have to act accordingly.

4. The information suggesting that the Croatian Government has information which it failed to provide on the question of some of the persons from para 2.

The information which the Croatian Government failed to provide on the question of persons looked for by the FR of Yugoslavia are based on:

- the statements of released persons (attached to the files),
- information gathered from the relatives through different channels,
- telephone and written information sent to relatives from abroad informing that their relatives are in prison,
- tapes and videos on the arrest of the missing persons in possession of the relatives or competent authorities.

5. The most pressing requests for financial or other help concerning missing persons where we expect the support of the ICMP.

1. Identification and release of all persons

2. Financial help is needed for:

- the work of the teams to establish burial sites of the killed and unidentified persons outside the territory of the FR of Yugoslavia as well as the work of the teams for exhumation and identification;
- burial of killed persons;
- assistance to families related funeral costs;
- assistance to the activities of the Association of the relatives of missing persons.

Most importantly, the Association of families and members of the family should be informed of the actions undertaken by the Commission with a view to investigating the question of missing persons, difficulties arising therefrom and which of the sides fails to cooperate in that respect.

6. As for para 6. from Mr. Vance's letter, concerning the issue of missing persons, the Commission of the Government of the FR of Yugoslavia for Humanitarian Questions and Missing Persons cooperates with non-governmental organization "Veritas" which covers the Serb Krajina (UNPA Sector) and which so far extended minimum financial assistance.

7. As for para 7, the ICMP can help expedite the process of resolving the question of missing persons, if:

1. pressures are brought to bear on all interested parties in Bosnia and Herzegovina and Republic of Croatia so that the provisions of the Dayton Agreement relating to the release of all prisoners be implemented. All deadlines expired long ago.

2. the Republic of Croatia which holds in its prisons persons from the territory of Bosnia and Herzegovina and denied at all meetings that the provisions of the Dayton Agreement pertain to the release of persons from the Republic of Croatia, is made to honour the provisions of the Dayton Agreement.

3. all sides be as soon as possible made to submit all available documentation on killed, identified or unidentified persons, and the sites where they were buried.

4. all sides (Republic of Croatia, Muslim-Croat Federation of Bosnia and Herzegovina) respond to submitted requests concerning missing persons

as soon as possible.

The FR of Yugoslavia stands ready to cooperate and consistently implement all commitments it has undertaken.

COMMISSION OF THE GOVERNMENT OF THE FR OF YUGOSLAVIA FOR HUMANITARIAN QUESTIONS AND MISSING PERSONS

Chairman of the Commission

Prof. Dr. Pavle Todorović, sgd.

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Agenda item 8

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Letter dated 7 April 1997 from the Chargé d'affaires a.i. of the Permanent Mission of the Syrian Arab Republic to the United Nations Office at Geneva addressed to the Chairman of the Commission on Human Rights

I have the honour to transmit to you, in your capacity as Chairman of the fifty-third session of the Commission on Human Rights, a statement setting forth my Government's position in regard to the allegations contained in document E/CN.4/1997/NGO/23 of 5 March 1997, trusting that you will have it circulated as an official document under item 8 of the session's agenda.

(Signed) Taher AL-HUSSAMI

GE.97-11714 (E)

1. The Government of the Syrian Arab Republic respects the International Federation of Human Rights Leagues as a non-governmental organization enjoying consultative status with the Economic and Social Council. However, my Government wishes to express its deep regret at the said Federation's ill-considered granting of ongoing affiliate status to the so-called "Organization of Committees for the Defence of Democratic Freedoms and Human Rights in Syria".

2. The allegations and accusations contained in the Federation's said letter addressed to the Secretary-General and published in the above-mentioned document are old, false and unfounded and the Permanent Mission of the Syrian Arab Republic to the United Nations Office at Geneva has already replied thereto in its notes 12/92 of 26 March 1992, 40/93 of 12 October 1993 and 26/96 of 25 June 1996 addressed to the Centre for Human Rights.

3. The above-mentioned Syrian notes clearly stated that the names mentioned in the Federation's letter were those of criminals against whom court judgements had been handed down in accordance with domestic legislation. Contrary to the Federation's allegations, they were not the names of defenders of human rights. The persons in question were detained due to their membership of a prohibited clandestine organization that acts against the security of the State with funding from external bodies and uses bombs, assassination, terrorism and incitement to armed insurrection as a means to achieve its despicable aims.

4. Those Syrian notes clearly indicated that the persons in question were tried in public and defended by 10 competent lawyers. They admitted their guilt and were sentenced to various penalties, depending on the type of crime committed by each of them and the provisions of the law. Three were acquitted for lack of evidence, four were sentenced to a three-year term of imprisonment, four others were sentenced to a five-year term of imprisonment and six were sentenced to terms of imprisonment ranging from 8 to 10 years. This provides a clear indication of the fairness and lawfulness of their trial and of the sentences handed down against them. Some were covered by the general amnesty promulgated by the President of the Republic on 13 March 1992, while others completed their sentences and were subsequently released.

5. With regard to the other allegations and accusations against Syria contained in the Federation's letter, it is evident that they are totally inconsistent with the information made available to the Centre for Human Rights and the special rapporteurs, which confirms that the Government of the Syrian Arab Republic is cooperating with a view to safeguarding human rights and fundamental freedoms.

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